

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

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UNITED STATES OF AMERICA,

CRIMINAL ACTION

Plaintiff

Docket No: 2:18-cr-107-JAW

-versus-

TIMOTHY ORTIZ,

Defendant

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Transcript of Proceedings

Pursuant to notice, the above-entitled matter came on for **Sentencing** held before **THE HONORABLE JOHN A. WOODCOCK, JR.**, United States District Judge, in the United States District Court, Edward T. Gignoux Courthouse, 156 Federal Street, Portland, Maine on the 29th day of August, 2019 at 1:00 p.m. as follows:

Appearances:

For the Government: Darcie McElwee, Esquire  
Assistant United States Attorney

For the Defendant: Luke Rioux, Esquire

Dennis R. Ford  
Official Court Reporter

(Prepared from manual stenography  
and computer-aided transcription)

1 (Open court. Defendant present.)

2 THE COURT: All right. We are here in the matter of  
3 United States versus Timothy Ortiz, which is 2:18-cr-107-JAW.  
4 Would counsel please enter their appearances.

5 MS. MCELWEE: Good afternoon, Your Honor. Darcie  
6 McElwee, Assistant United States Attorney for the United  
7 States.

8 THE COURT: Good afternoon.

9 MR. RIOUX: Your Honor, Luke Rioux, attorney for Mr.  
10 Ortiz.

11 THE COURT: Good afternoon. So pursuant to our  
12 discussion yesterday, I notice that the Government has filed  
13 an information slightly altering the contents of the  
14 indictment, and has also filed a revised prosecution version  
15 on the same date, and it's my understanding that Mr. Ortiz is  
16 prepared accordingly to waive his right to indictment by a  
17 grand jury on that charge and to plead guilty to the newly  
18 filed information; is that correct?

19 MR. RIOUX: That is, Your Honor. We have a waiver  
20 of indictment here. We've reviewed together the new  
21 information. We also reviewed the prosecution version and  
22 we've discussed -- about it, the significant changes that have  
23 been made and we are prepared to waive the grand jury and  
24 plead to the information.

25 THE COURT: All right. Let's proceed with that

1 first and assuming that goes through, we will turn then to the  
2 question of sentencing.

3 Mr. Ortiz, would you state your name?

4 THE DEFENDANT: Timothy Ortiz.

5 THE COURT: Mr. Ortiz, the purpose of this part of  
6 the hearing this afternoon is for me to make sure you  
7 understand what you're doing and that you're doing what you're  
8 doing of your own free will. In other words, what you do must  
9 be both knowing and voluntary; do you understand?

10 THE DEFENDANT: Yes.

11 THE COURT: I'm going to start by asking you some  
12 questions because I want to be sure you're competent.

13 How old are you, Mr. Ortiz?

14 THE DEFENDANT: 25.

15 THE COURT: How far did you go in school?

16 THE DEFENDANT: 10th grade.

17 THE COURT: Are you now or have you recently been  
18 under the care of a physician or psychiatrist?

19 THE DEFENDANT: No.

20 THE COURT: Are you currently taking any medicine?

21 THE DEFENDANT: No.

22 THE COURT: Have you failed to take any medicine a  
23 doctor told you you should take?

24 THE DEFENDANT: No.

25 THE COURT: Have you used any drugs or alcohol in

1 the last 24 hours?

2 THE DEFENDANT: No.

3 THE COURT: Do you believe you understand what's  
4 happening in these proceedings?

5 THE DEFENDANT: Yes.

6 THE COURT: Has your attorney explained to you the  
7 consequences that may flow from these proceedings?

8 THE DEFENDANT: Yes.

9 THE COURT: Mr. Rioux, have you had an opportunity  
10 to speak to your client today?

11 MR. RIOUX: Yes, I have.

12 THE COURT: Do you have any concerns about his  
13 competence?

14 MR. RIOUX: No.

15 THE COURT: Based on your lawyer's responses, your  
16 responses and my direct observations, Mr. Ortiz, I do find you  
17 are competent.

18 Have you been provided with a copy of the proposed  
19 information setting forth the charge that the Government is  
20 bringing against you?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you understand the charge being made  
23 against you?

24 THE DEFENDANT: Yes.

25 THE COURT: Have you consulted with Mr. Rioux about

1       these charges and has he explained them to you?

2               THE DEFENDANT:   Yes.

3               THE COURT:   Mr. Rioux, are you satisfied that your  
4       client understands the nature and the significance of the  
5       charge made against him in the proposed information?

6               THE DEFENDANT:   Yes, Your Honor.

7               THE COURT:   And do you approve of your client's  
8       waiver of indictment?

9               MR. RIOUX:   I do.

10              THE COURT:   Mr. Ortiz, the new information that was  
11       filed on August 28, 2019, just yesterday, alleges as follows:  
12       That you are guilty of a crime called possession of a firearm  
13       by a felon.

14              It alleges that on or about September 25-26, 2016 in the  
15       District of Maine, which means the state of Maine, you, also  
16       known as Tyson, having been convicted of the following crimes  
17       punishable by a term of imprisonment exceeding one year,  
18       specifically aggravated sex trafficking, Class B, and unlawful  
19       furnishing drugs, Class C, in Cumberland County Unified Court  
20       in Portland, Maine, in docket number CUMCD-2015-05203,  
21       judgment having been entered on February 5, 2016, knowingly  
22       possessed in and affecting commerce a firearm, specifically a  
23       Ruger new model Blackhawk .357 revolver bearing serial number  
24       36-98896.

25              It also alleges that at the time the defendant possessed

1 the firearms, he knew that he had been previously convicted of  
2 a crime punishable by imprisonment for more than one year and  
3 therefore violated federal criminal law.

4 Do you understand the charge set forth in the  
5 information that has been filed yesterday by the Government?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you understand that the charge made  
8 against you in the information is a felony offense?

9 THE DEFENDANT: Yes.

10 THE COURT: You have a constitutional right to  
11 require that this matter proceed only upon indictment of a  
12 grand jury of this district.

13 You can waive or give up that right. If you do give up  
14 that right, the matter will proceed against you without any  
15 consideration of the matter by a grand jury. It will proceed  
16 solely upon the Government's own information; do you  
17 understand?

18 THE DEFENDANT: Yes.

19 THE COURT: If you do not give up that right, the  
20 matter will not proceed against you unless and until a grand  
21 jury of this district finds by returning an indictment that  
22 there is probable cause to believe that the offense charged  
23 was committed by you.

24 A grand jury is comprised of at least 16, but no more  
25 than 23 people, selected at random from the residents of this

1 district. At least 12 grand jurors must find probable cause  
2 to believe that the offense charged in the proposed  
3 information was committed by you before you could be indicted,  
4 and a grand jury might not indict you for this offense; do you  
5 understand?

6 THE DEFENDANT: Yes.

7 THE COURT: Have you discussed your waiver of  
8 indictment with your attorney and received Mr. Rioux's advice?

9 THE DEFENDANT: Yes.

10 THE COURT: Has anyone made any threats or promises  
11 to you in an effort to get you to waive your right to  
12 indictment by a grand jury?

13 THE DEFENDANT: No.

14 THE COURT: Mr. Rioux, are you aware of any reason I  
15 should not permit this defendant to waive indictment?

16 MR. RIOUX: I'm not, Your Honor.

17 THE COURT: You indicated that your client has  
18 already signed the prescribed waiver form?

19 MR. RIOUX: Yes, Your Honor. We have it here.

20 THE COURT: Would you present that to the clerk.

21 Mr. Ortiz, I have before me a form called waiver of  
22 indictment. There's a signature above the signature line with  
23 the defendant's signature; is that your signature?

24 THE DEFENDANT: Yes.

25 THE COURT: Did you read this form before you signed

1       it?

2               THE DEFENDANT:   Yes.

3               THE COURT:   Did you have a chance to consult with  
4       Mr. Rioux concerning the nature of the form and its  
5       significance before you signed it?

6               THE DEFENDANT:   Yes.

7               THE COURT:   Did you understand what you were  
8       signing?

9               THE DEFENDANT:   Yes.

10              THE COURT:   Did you sign it voluntarily?

11              THE DEFENDANT:   Yes.

12              THE COURT:   I find the defendant has knowingly and  
13       voluntarily waived his rights to indictment by a grand jury of  
14       this district.   The defendant's waiver of indictment is hereby  
15       accepted and the information against this defendant will be  
16       filed at this time.   I'm going to return the waiver of  
17       indictment form to the clerk.

18              Do I understand correctly that the defendant is now  
19       ready for arraignment on the information?

20              MR. RIOUX:   Yes, Your Honor.

21              THE COURT:   Do I understand correctly he intends on  
22       arraignment to tender a plea of guilty to the charged offense?

23              MR. RIOUX:   That is correct.

24              THE COURT:   Mr. Ortiz, have you received a copy of  
25       the information that I read to you?



1 THE DEFENDANT: Yes, I have.

2 THE COURT: Have you had an adequate opportunity to  
3 discuss this charge and the case in general with your  
4 attorney?

5 THE DEFENDANT: Yes.

6 THE COURT: The clerk may inquire.

7 THE CLERK: Timothy Ortiz, you're charged in Count 1  
8 -- in a one count information bearing criminal No.  
9 2:18-cr-107. How do you now plead to the charge contained in  
10 Count 1 of the information; do you plead guilty or not guilty?

11 THE DEFENDANT: Guilty.

12 THE CLERK: The defendant pleads guilty to Count 1  
13 of the information, Your Honor.

14 THE COURT: Thank you. Mr. Ortiz, I have a very  
15 important question for you, and obviously in this courtroom I  
16 require an honest and truthful answer.

17 Have you pleaded guilty to the charge contained in Count  
18 1 of the information because you are actually guilty of that  
19 crime and for no other reason?

20 THE DEFENDANT: Yes.

21 THE COURT: Mr. Rioux, are you satisfied that your  
22 client has pleaded guilty because he is actually guilty?

23 MR. RIOUX: I am, yes.

24 THE COURT: Have you had enough time to discuss the  
25 charge with your attorney?

1 THE DEFENDANT: Yes.

2 THE COURT: Has Mr. Rioux explained to you the  
3 elements and nature of the offense charged?

4 THE DEFENDANT: Yes.

5 THE COURT: Has he also told you about the penalties  
6 that may be imposed?

7 THE DEFENDANT: Yes.

8 THE COURT: Mr. Rioux, are you satisfied your client  
9 understands the charge contained in Count 1 of the information  
10 and the penalties that may be imposed?

11 MR. RIOUX: Yes, Your Honor, I am.

12 THE COURT: I earlier read to you the information.  
13 I'm now going to turn to the penalties that may be applicable  
14 to the crime to which you are pleading guilty.

15 By pleading guilty to this crime, you're subject to  
16 being placed in jail for a period not to exceed ten years.  
17 You're subject to a fine not to exceed \$250,000 and it can be  
18 both prison and the fine.

19 Following any term of imprisonment, you may be placed on  
20 supervised release for a period not to exceed three years. If  
21 you were to violate a term of supervised release, you could go  
22 back to jail for a period not to exceed two years for each  
23 violation. You are subject to a special assessment of \$100  
24 and by pleading guilty to this crime, if you're not a United  
25 States citizen, you may be removed from the United States,

1       denied citizenship and denied admission to the United States  
2       in the future.

3               Do you understand that these are the maximum penalties  
4       that may be applicable to the crime to which you're pleading  
5       guilty?

6               THE DEFENDANT:   Yes.

7               THE COURT:   Now, Mr. Ortiz, I'm sure you understand  
8       this, but I want it clear that you do.  You do understand that  
9       the law does not require you to come into court today and  
10      plead guilty; do you understand that?

11              THE DEFENDANT:   Yes.

12              THE COURT:   In other words, if you were to tell me  
13      right now that you were having second thoughts and you wanted  
14      to withdraw your plea of guilty, I would let you right now  
15      withdraw your plea of guilty and plead not guilty; do you  
16      understand?

17              THE DEFENDANT:   Yes.

18              THE COURT:   You're going to have the right to change  
19      your mind and plead not guilty up until the time today that I  
20      accept your guilty plea, if I do decide to accept it; do you  
21      understand?

22              THE DEFENDANT:   Yes.

23              THE COURT:   I'm going to take a moment and review  
24      with you the other rights that you have that you're waiving or  
25      giving up by pleading guilty.  You have the right to trial by

1 jury. You have the right to the assistance of your lawyer at  
2 such a trial and if you cannot afford a lawyer, you would have  
3 the right to have a lawyer appointed for you at Government  
4 expense; do you understand?

5 THE DEFENDANT: Yes.

6 THE COURT: At trial, you would be presumed innocent  
7 and the Government would have the burden of proving you are  
8 guilty beyond a reasonable doubt and you would not have the  
9 burden of proving that you're not guilty; do you understand?

10 THE DEFENDANT: Yes.

11 THE COURT: At trial, the Government's witnesses  
12 would have to come into open court and testify in front of you  
13 and your lawyer. Your lawyer would have the opportunity to  
14 cross-examine any Government witness, to object to evidence  
15 the Government might offer and to offer evidence on your  
16 behalf. Your lawyer would also have the right to compel the  
17 attendance of witnesses at trial who might prove helpful to  
18 your case; do you understand?

19 THE DEFENDANT: Yes.

20 THE COURT: You would have the right to testify at  
21 trial if you wanted to, but you would also have the right not  
22 to testify and you could not be required to testify at a  
23 trial. If you chose not to testify, I would instruct the jury  
24 that they could draw no inference or suggestion of guilt from  
25 the fact you did not testify; do you understand?

1 THE DEFENDANT: Yes.

2 THE COURT: If I accept your guilty plea, you will  
3 have given up your right to a trial and the other rights I've  
4 just described to you and there will be no trial of any kind  
5 on this charge; do you understand?

6 THE DEFENDANT: Yes.

7 THE COURT: If I proceed to enter a judgment of  
8 guilty and sentence you on the basis of your guilty plea, and  
9 if all that happens, except for very limited circumstances,  
10 you'll have no right of appeal from your conviction; do you  
11 understand?

12 THE DEFENDANT: Yes.

13 THE COURT: As a part of your pleading guilty, I  
14 must find there is a factual basis for your guilty plea and to  
15 assure myself of such a factual basis, I will be asking you  
16 questions about the conduct that gave rise to this charge and  
17 you must answer my questions truthfully; do you understand?

18 THE DEFENDANT: Yes.

19 THE COURT: In light of all that I've just explained  
20 to you, all the rights that you have that you're waiving and  
21 giving up by pleading guilty, do you still choose to plead  
22 guilty to the charge contained in Count 1 of the information?

23 THE DEFENDANT: Yes.

24 THE COURT: Thank you. You may be seated. Ms.

25 McElwee, I have before me a prosecution version of the

1 offense, which is dated August 28, 2019. Does this  
2 prosecution version contain at a minimum the evidence that the  
3 Government would bring to bear if the matter were to go to  
4 trial?

5 MS. MCELWEE: It does, Your Honor.

6 THE COURT: Thank you. Mr. Rioux, have you had an  
7 opportunity to review the prosecution version in this case?

8 MR. RIOUX: I have, Your Honor, yes.

9 THE COURT: Are you satisfied the Government can, in  
10 fact, produce the evidence that's set forth in the prosecution  
11 version?

12 MR. RIOUX: Yes, I am.

13 THE COURT: Are you also satisfied, Mr. Rioux, that  
14 the admissible part of that evidence would permit a properly  
15 instructed jury to determine beyond a reasonable doubt that  
16 your client is guilty of the crime to which he is pleading  
17 guilty?

18 MR. RIOUX: Yes, I am.

19 THE COURT: Mr. Ortiz, would you stand again, sir.  
20 I have before me a document entitled prosecution version which  
21 is dated August 28, 2019; have you seen that document?

22 THE DEFENDANT: Yes.

23 THE COURT: This is a very important document,  
24 correct?

25 THE DEFENDANT: Yes.

1 THE COURT: It basically sets forth in some detail  
2 what it is the Government says you did to commit this crime;  
3 do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: Did you read it carefully to determine  
6 whether it was accurate?

7 THE DEFENDANT: Yes.

8 THE COURT: Now again, I have a very important  
9 question for you, Mr. Ortiz, and require an honest and  
10 truthful answer. Do you disagree in any way with what is set  
11 forth in the prosecution version?

12 THE DEFENDANT: No.

13 THE COURT: Is the information set forth in the  
14 prosecution version true to your own personal knowledge?

15 THE DEFENDANT: Yes.

16 THE COURT: Based on my review of the prosecution  
17 version, your responses and your lawyer's response, I do find  
18 there is a factual basis for the guilty plea to the crime  
19 charged in Count 1 of the information.

20 The next part of this process is for me to make sure  
21 what you're doing today is of your own free will. Has anyone  
22 threatened you or has anyone attempted to force you to get you  
23 in any way to plead guilty?

24 THE DEFENDANT: No.

25 THE COURT: I understand there is a plea agreement

1 in this case; is that correct, counsel?

2 MS. MCELWEE: That is correct, Your Honor.

3 THE COURT: And the earlier plea agreement that had  
4 been entered into between the parties regarding the indictment  
5 is equally applicable to this charge; is that correct?

6 MS. MCELWEE: It is, Your Honor.

7 THE COURT: Is that correct, Mr. Rioux?

8 MR. RIOUX: That's our understanding, yes, Your  
9 Honor.

10 THE COURT: Other than the plea agreement, Ms.  
11 McElwee, has the Government made any formal plea offers to the  
12 defendant?

13 MS. MCELWEE: We have not, Your Honor.

14 THE COURT: Is that correct, Mr. Rioux?

15 MR. RIOUX: That is correct.

16 THE COURT: Is that correct, Mr. Ortiz, you've  
17 received no other formal plea offers from the Government not  
18 contained in the agreement to plead guilty?

19 THE DEFENDANT: Yes.

20 THE COURT: I'm going to ask that you turn to Page 5  
21 of the plea agreement. This is a plea agreement which is  
22 dated January 4, 2019, and January 2nd signed by Ms. McElwee.  
23 There is a signature line on Page 5 and a signature above the  
24 signature line for Timothy Ortiz, defendant; is that your  
25 signature?



1 THE DEFENDANT: Yes.

2 THE COURT: Did you read this document before you  
3 signed it?

4 THE DEFENDANT: Yes.

5 THE COURT: Did you have a chance to consult with  
6 Mr. Rioux about the significance of the document before you  
7 signed it?

8 THE DEFENDANT: Yes.

9 THE COURT: Did you understand what you were  
10 signing?

11 THE DEFENDANT: Yes.

12 THE COURT: Did you sign it voluntarily?

13 THE DEFENDANT: Yes.

14 THE COURT: In signing the document, did you intend  
15 to agree to all its terms and conditions?

16 THE DEFENDANT: Yes.

17 THE COURT: There are a couple of -- there are a  
18 number of provisions in this document that I want to be sure  
19 you understand. This says on Page 2, Paragraph 3, that the  
20 parties agree to make the following non-binding  
21 recommendations as to sentencing.

22 1. The parties agree that you're subject to a base  
23 offense level of 14, that two levels should be added because  
24 the offense involved at least one stolen firearm, that four  
25 levels are added because the defendant used one of the

1 firearms in connection with another felony offense, namely  
2 unlawful trafficking in scheduled drugs and/or voluntary  
3 manslaughter, for an adjusted offense level of 20.

4 The parties also agree that the defendant used the  
5 firearm cited in the offense of conviction in connection with  
6 the commission of another offense, namely voluntary  
7 manslaughter, and that death resulted such that United States  
8 Sentencing Guideline 2A1.3 applies, and the defendant is  
9 subject to a base offense level of 29.

10 3. The parties agree to recommend that you have  
11 accepted responsibility for -- it says offenses, but it should  
12 be offense -- of conviction and that the Court should reduce  
13 your adjusted offense level by three levels.

14 Finally, the parties agree that an advisory guideline  
15 sentence range of imprisonment is appropriate and therefore  
16 accordingly, defendant will recommend a sentence of no less  
17 than 92 months of imprisonment, and the United States will  
18 recommend a sentence of no more than 115 months.

19 For our purposes, the important language is what  
20 follows, and it says the parties expressly agree and  
21 understand that should the Court reject either or both of the  
22 recommendations of the parties -- it should be any of the  
23 recommendations of the party -- the defendant will not thereby  
24 be permitted to withdraw his plea of guilty.

25 What that in effect means is that these recommendations

1       that you've entered into with the prosecutor are  
2       recommendations to the Court only and I'm not bound by those  
3       recommendations. I could accept the recommendations or I  
4       could reject the recommendations, and if I reject the  
5       recommendations or accept them, and then decide to impose a  
6       sentence that is harsher than the one being recommended by the  
7       Government, you will not have any right to then withdraw your  
8       guilty plea; do you understand?

9               THE DEFENDANT: Yes.

10              THE COURT: This goes on to say that you're aware  
11       that Title 18, United States Code, section 3742 affords the  
12       defendant the right to appeal the sentence imposed. Knowing  
13       that, the defendant waives the right to appeal the following:

14              A. Defendant's guilty plea and any other aspect of  
15       defendant's conviction in the above-captioned case.

16              You may recall that just a little while ago, Mr. Ortiz,  
17       I told you your right to appeal your conviction and your  
18       guilty plea is going to be limited because you are pleading  
19       guilty; do you remember that? Do you remember that?

20              THE DEFENDANT: Yes.

21              THE COURT: However, under the terms of this  
22       agreement, and these agreements are usually upheld as a matter  
23       of law, you are waiving or giving up any right to appeal your  
24       conviction and your guilty plea to a higher court; do you  
25       understand?

1 THE DEFENDANT: Yes.

2 THE COURT: This goes on to say that you waive the  
3 right to appeal the following; a sentence of imprisonment that  
4 does not exceed 115 months.

5 Unlike your right to appeal your guilty plea or your  
6 conviction, you would have, but for the terms of this  
7 agreement, a right to appeal any sentence that I impose; do  
8 you understand?

9 THE DEFENDANT: Yes.

10 THE COURT: However, under the terms of this  
11 agreement -- and again these agreements are usually upheld as  
12 a matter of law -- if I impose a sentence of 115 months or  
13 less, you are waiving or giving up the right to challenge the  
14 legality of that sentence by appealing to a higher court; do  
15 you understand?

16 THE DEFENDANT: Yes.

17 THE COURT: That means, for all intents and  
18 purposes, I will be the only judge if I impose a sentence of  
19 115 months or less to review the legality of that sentence; do  
20 you understand?

21 THE DEFENDANT: Yes.

22 THE COURT: Now, as far as sentencing is concerned,  
23 the plea agreement will permit you and your lawyer and the  
24 prosecutor to make recommendations regarding your sentence,  
25 but the authority to determine the appropriate sentence rests

1 with me as the judge in this court, and if I do not accept  
2 those recommendations, you will have no right to withdraw your  
3 guilty plea; do you understand?

4 THE DEFENDANT: Yes.

5 THE COURT: Sentencing Commission's advisory  
6 guidelines will be considered by the Court in determining your  
7 sentence. I have an obligation to calculate the appropriate  
8 -- the applicable sentencing guideline range, to consider that  
9 range, to consider possible departures under the guidelines,  
10 including increases and decreases.

11 Once I fix the applicable guideline sentencing range, I  
12 treat that range as advisory and I sentence you in accordance  
13 with certain factors set forth in federal criminal law,  
14 including your own history and characteristics, the nature and  
15 circumstances of the offense and the need to protect the  
16 public from future crimes that you might commit.

17 Have you and your lawyer talked about how these issues  
18 may affect your sentence?

19 THE DEFENDANT: Yes.

20 THE COURT: I can't determine the advisory guideline  
21 sentence until after I've read -- which I have in this case --  
22 a presentence report that the probation office will prepare  
23 and I've already given your lawyer and the prosecutor an  
24 opportunity to challenge the facts in the report.

25 Once I find the advisory guideline, I still have the

1 authority to impose a sentence that is more severe or could be  
2 less severe than the sentence called for by the applicable  
3 guideline; do you understand?

4 THE DEFENDANT: Yes.

5 THE COURT: And if I were to do that, if I were to  
6 impose a sentence more severe than the one called for by the  
7 guidelines, you will still not be permitted to withdraw your  
8 guilty plea; do you understand?

9 THE DEFENDANT: Yes.

10 THE COURT: If a term of imprisonment is imposed,  
11 you will be required to actually serve in a jail or prison all  
12 of the imprisonment term, except for any good time deductions,  
13 and you'll not be permitted to serve any part of it on parole;  
14 do you understand?

15 THE DEFENDANT: Yes.

16 THE COURT: Aside from the written plea agreement,  
17 has anyone made any promises to you in an effort to get you to  
18 plead guilty?

19 THE DEFENDANT: No.

20 THE COURT: Has anyone made any promise to you,  
21 other than what is set forth in the plea agreement, as to what  
22 the prosecutor's recommendation at the time of sentencing is  
23 going to be?

24 THE DEFENDANT: No.

25 THE COURT: Has anyone made any promise to you as to

1       what kind of sentence I will impose?

2               THE DEFENDANT:   No.

3               THE COURT:   I ask you finally then, do you still  
4       wish to plead guilty to the charge contained in Count 1 of the  
5       information?

6               THE DEFENDANT:   Yes.

7               THE COURT:   And Mr. Rioux, do you as Mr. Ortiz's  
8       attorney still recommend I accept the guilty plea?

9               MR. RIOUX:   Yes, sir.

10              THE COURT:   Mr. Timothy Ortiz, since you acknowledge  
11       that you are, in fact, guilty as charged in Count 1 of the  
12       information, and since I find there is a factual basis for the  
13       plea, and since I find based on your responses to my questions  
14       and my direct observations that you are competent to enter a  
15       plea, and since I find you know of your right to a trial and  
16       the rights associated with the right to a trial, and since I  
17       further find you know the maximum possible punishment that may  
18       be imposed if you are convicted, and since I find that you  
19       have not been coerced, but that you have voluntarily and  
20       knowingly tendered a plea of guilty to Count 1 of this  
21       information, I now accept your guilty plea as tendered.  You  
22       may be seated.

23              Are we prepared at this time to proceed with sentencing?

24              MS. MCELWEE:   We are, Your Honor.

25              MR. RIOUX:   Your Honor, I am going to ask -- members

1 of the defendant's family walked in, I wonder if we might take  
2 a very brief recess to get down on paper who is here and who  
3 may want to speak, if anyone.

4 THE COURT: Sure, certainly. The Court will stand  
5 in recess.

6 (Recess called)

7 THE COURT: All right. Are we now prepared to  
8 proceed with sentencing?

9 MS. MCELWEE: Yes, Your Honor.

10 MR. RIOUX: We are, Your Honor, yes.

11 THE COURT: Mr. Ortiz, would you stand. Mr. Ortiz,  
12 the purpose of this part of the hearing this afternoon is for  
13 me to sentence you. Before I do that, I'm going to hear from  
14 your lawyer, I'll hear from the prosecutor, I will hear from  
15 you if you wish to speak to me.

16 I'm going to start by asking you some questions because  
17 I want to be sure you're read and reviewed the presentence  
18 report as its been revised.

19 I have already determined that you are competent and  
20 that determination continues throughout the course of this  
21 hearing. I do want to ask you about your representation by  
22 Mr. Rioux.

23 You have been represented by Mr. Rioux, the gentleman  
24 standing beside you; is that correct?

25 THE DEFENDANT: Yes.



1 THE COURT: Have you been satisfied with Mr. Rioux's  
2 legal services?

3 THE DEFENDANT: Yes.

4 THE COURT: And do you authorize Mr. Rioux to act  
5 and speak for you throughout these proceedings?

6 THE DEFENDANT: Yes.

7 THE COURT: Mr. Rioux, has your client received a  
8 copy of the written presentence investigation report as  
9 revised?

10 MR. RIOUX: Yes, Your Honor.

11 THE COURT: Have you had enough time to discuss the  
12 contents of the report with him?

13 MR. RIOUX: Yes.

14 THE COURT: Mr. Ortiz, have you read the report in  
15 its entirety?

16 THE DEFENDANT: Yes.

17 THE COURT: Have you had enough time to discuss the  
18 contents with your attorney?

19 THE DEFENDANT: Yes.

20 THE COURT: Do you know and understand everything  
21 that is set forth in the report?

22 THE DEFENDANT: Yes.

23 THE COURT: Now, you realize that the reason for the  
24 report is to give me information so that I can determine the  
25 correct sentence to impose upon you; do you understand that?

1 THE DEFENDANT: Yes.

2 THE COURT: Knowing that the contents of the report  
3 may affect your sentence, are there any facts in the report  
4 that you believe are in any way inaccurate or incorrect?

5 THE DEFENDANT: No.

6 THE COURT: Thank you. You may be seated. Counsel  
7 have -- as we have discussed -- isolated a guideline's issue  
8 in this case. I have received, prior to coming in here, a  
9 packet of information that sets forth sentencing exhibits, and  
10 I have both the Government's and the defendant's.

11 First, Ms. McElwee, I have before me Government's  
12 Exhibits 1 through 5; do you move for the admission of  
13 Government's Exhibits 1 through 5?

14 MS. MCELWEE: I do, Your Honor, and I have the  
15 originals here with the exhibits to give to the clerk.

16 THE COURT: Okay, very good. Have you seen those,  
17 Mr. Rioux?

18 MR. RIOUX: Yes, Your Honor, I have.

19 THE COURT: Do you have any objection?

20 MR. RIOUX: No.

21 THE COURT: The Court admits Government's Exhibits 1  
22 through 5. I've also received a series of exhibits that I  
23 sort of unconventionally marked. Have you marked them  
24 differently or how do you want to proceed with that?

25 MR. RIOUX: Yes, Your Honor. My apologies for that.

1 We did an index, which was provided, but in the e-mailed copy  
2 they were not marked as exhibits. I have marked them now and  
3 I have a copy of the originals for the Court, Exhibits 1  
4 through 9.

5 THE COURT: Have you seen those?

6 MS. MCELWEE: I have my old set and I have no  
7 objection to them being admitted, Judge.

8 THE COURT: The Court admits sentencing exhibits 1  
9 through 9 on the part of the defendant. I read the very  
10 helpful memoranda that has been submitted by counsel.

11 Ms. McElwee, it's your burden, would you like to be  
12 heard?

13 MS. MCELWEE: Yes, Your Honor. Do you want us to  
14 just initially address the one disputed issue?

15 THE COURT: Yes.

16 MS. MCELWEE: Judge, I appreciate that you have had  
17 what you might call a snapshot of what is alleged to have  
18 occurred in that apartment in Biddeford in September of 2016,  
19 and Mr. Rioux and I obviously spent a lot of time together  
20 talking about our opinions and our perspectives and so we  
21 tried to streamline what evidence we could give you so that  
22 you would have an opportunity to focus on those pieces of  
23 evidence we thought would glean the most accurate picture.

24 To describe the scene of what happened in that apartment  
25 hallway that led to Mr. Methot's death as chaotic is an

1 understatement. It's a very quick event that has a limited  
2 number of witnesses, and to be perfectly fair, one of the most  
3 critical witnesses to that event was more than reluctant to  
4 talk to the police in the very beginning and that's Mr.  
5 Williams.

6 He lied to the police, told them he hadn't seen what  
7 happened, told them he wasn't even there. And then prior to  
8 the state trial, came forward and told what he claimed was his  
9 version of the events and the state made its own decision to  
10 not call Mr. Williams.

11 I then reached out, as the Court can see from  
12 Government's Exhibit 4, and met with him with my agents and  
13 did what we thought was a full debrief of his memory of the  
14 event.

15 I submit to you, although you haven't had the  
16 opportunity to hear from him yourself, that his statement is  
17 consistent with the other witnesses. I would argue that the  
18 most helpful evidence before you is the testimony of Ms. Ball  
19 and the statement of Mr. Williams, and I don't think they are  
20 as contradictory to each other as the defense suggests.

21 I believe that you can find that both their interactions  
22 with Mr. Methot and Mr. Ortiz could coexist. That Mr. Methot  
23 can be arguing with Mr. Williams and that Ms. Ball can insert  
24 herself in an attempt to assist Mr. Ortiz, who the Government  
25 does not dispute was being choked by Mr. Methot. And that it

1 was a serious choking and that she felt the need to enter  
2 herself, but that she was successful in doing so and that she  
3 was able to separate these men and that Mr. Ortiz's initial  
4 shot may very well have been in self-defense.

5 That as he pulled that gun from his waistband, he either  
6 shot Mr. Methot and didn't cause his death because Mr. Methot  
7 continued to move, but that that interference by Ms. Ball  
8 separated the two and stopped the threat of deadly force  
9 against Mr. Ortiz, which would have allowed him to retreat.

10 That incident, in the Government's view, was over, which  
11 makes in our opinion the second and third shots at least  
12 voluntary manslaughter, if not murder, but we have taken the  
13 position it was voluntary manslaughter, and for purposes of  
14 the record, to be clear it literally makes a difference of  
15 five months in the guidelines because of the statutory  
16 maximum. So to say it was murder, to pursue that was just not  
17 something that was necessary in this case.

18 But Mr. Williams' statement is that after Ms. Ball runs  
19 away, which she says she does to go into the back room to  
20 address the fact that there's two young girls there, one who  
21 is under 18, Mr. Ortiz's paramour and the sister, who is  
22 dating or seeing Mr. Williams, she runs, to quote as she  
23 testified, check on those two girls. She's out of sight,  
24 she's out of view and she says she hears the second or third  
25 shot, but that means she has enough time to get into another

1 room out of sight to not see what Mr. Williams claims he saw  
2 and felt, which was Mr. Ortiz's arm coming up over his  
3 shoulder and Mr. Ortiz saying oh yeah to Mr. Methot as he  
4 shoots him in what the medical examiner says is the face  
5 causing his death.

6 I submit that the Government's first four exhibits  
7 support that theory of the event, that it isn't inconsistent  
8 with the defense's exhibits and that for those reasons, the  
9 Court can find that at least 17-A, section 203 of the Maine  
10 statute, which charges voluntary manslaughter, that is that  
11 Mr. Ortiz recklessly caused the death of another person, has  
12 been met.

13 THE COURT: But we -- we wouldn't -- for guideline  
14 purposes, we wouldn't be using the state definition. We would  
15 be using the federal definition of voluntary manslaughter.

16 MS. MCELWEE: That's correct, Judge. That's  
17 correct. And I would submit for the same reasons that that is  
18 met as well.

19 You are correct about that, and I'm happy to answer any  
20 questions you have about that. I don't want to get into the  
21 weeds, unless you'd like me to, on any particular witness or  
22 statement, but that's our theory of the event. That the first  
23 shot might have been self-defense, but that the second and  
24 third, which actually caused his death, was at least voluntary  
25 manslaughter. Thank you.

1 THE COURT: Thank you very much. Mr. Rioux.

2 MR. RIOUX: Thank you, Your Honor. Your Honor, I  
3 think there's some value that this Court might carefully  
4 consider and may find that the manslaughter statute does not  
5 apply here.

6 It appears, first off, Mr. Ortiz did go to trial in this  
7 case and was acquitted of the state court charge of  
8 manslaughter. Federal law of manslaughter is the unlawful  
9 killing of a human being without malice, voluntary in this  
10 case, and it's an interesting question because the  
11 unlawfulness would be generally determined under state law,  
12 which did not find the killing unlawful. In fact, found the  
13 killing justified.

14 Still a horrible tragedy and a horrific event,  
15 underlying circumstances, but the question specific for this  
16 Court is really whether that is an unlawful killing under the  
17 federal conception.

18 THE COURT: Can I ask you about the -- how you  
19 interpret the plea agreement and your role?

20 The plea agreement provides that the parties agree that  
21 the defendant used a firearm cited in the offense of  
22 conviction in connection with the commission of another  
23 offense, namely voluntary manslaughter, and that death  
24 resulted such that United States Sentencing Guidelines,  
25 section 2A1.3, applies and that the defendant was subject to a

1 base offense level of 29.

2 How do you see that in terms of whether the plea  
3 agreement allows you to argue that 29 doesn't apply?

4 MR. RIOUX: Right. Well, Your Honor, we've made a  
5 non-binding recommendation on the Court and came to that  
6 agreement through a lot of negotiations with the prosecution.  
7 While it's still our -- while we're still bound by the plea  
8 agreement and the prosecution hasn't argue we're breaching it,  
9 we have not waived our right to have an independent tribunal  
10 to consider the issue and apply the appropriate guideline  
11 sentence.

12 And so while we made our recommendation, I also  
13 understand the difficult position the Court's in and the  
14 challenging legal issues presented here, and I think there is  
15 some more reason that the Court has to grapple with this and  
16 may have trouble applying that guideline range.

17 If you look to the statement that -- so Mr. Williams has  
18 offered in his testimony -- in our view it's inconsistent with  
19 the physical evidence found at the scene and through the  
20 testimony of other witnesses he has explained in his most  
21 recent statement, I believe, that he saw three shots fired  
22 while the butt of the gun was on the shoulder.

23 As I've tried to show the Court, as I understand Mr.  
24 Williams' statement, Your Honor, the diagram that we have that  
25 would have put Mr. Williams somewhere in the doorway to the



1 living room with Mr. Ortiz behind him -- my Exhibit 1 is that  
2 diagram -- firing with the gun placed across Mr. Williams'  
3 shoulder at Mr. Methot, who was very near the basement door  
4 under the stairway. What we know from the medical examiner's  
5 testimony and report is that the fatal round is the only round  
6 that struck Mr. Methot, and that it was fired from a distance  
7 of nearly point-blank range, within arm's length away. That  
8 doesn't make sense with the -- in recounting what Otis has  
9 given in his July statement.

10 THE COURT: So I have this in front of me. It says  
11 not to scale, so that doesn't give me an idea of any of the  
12 distances here.

13 MR. RIOUX: While it's not to scale, I think it does  
14 give you an idea of the relationships of the distances.

15 THE COURT: Where in -- so that I understand, where  
16 do you understand is A, B, C and D since they're not really  
17 identified?

18 Where do you understand Mr. Otis says -- Mr. Otis -- he  
19 was and where he says that Mr. Williams says where Mr. Ortiz  
20 was and Mr. Methot and where do you understand that Mr.  
21 Williams says Mr. Ortiz was and Mr. Methot was at the time of  
22 the shootings?

23 MR. RIOUX: Well, Mr. Williams' statement says that  
24 he was standing with his back to the living room, and so I  
25 take that to mean that he was standing near the doorway or, I

1 guess, more like pass through from the front of the entry  
2 hall, you would take a left and pass into the living room.

3 THE COURT: Right.

4 MR. RIOUX: I understood that to mean he was  
5 standing near that entrance to the living with his back sort  
6 of toward that couch as depicted in the diagram.

7 And my understanding he was facing -- there's an arrow  
8 toward number B -- letter B, he would have been facing that  
9 arrow point with Mr. Methot standing very near the point of  
10 that arrow. But if the Court is then -- Mr. Ortiz came up  
11 from behind Mr. Williams --

12 THE COURT: So Mr. Ortiz had to come from somewhere  
13 back in the living room there?

14 MR. RIOUX: Yes. That's what it seems to be  
15 recounting.

16 THE COURT: And then what's the -- can you give me  
17 the estimate of the distance between wherever you say Mr.  
18 Williams -- or for that matter the defendant -- were standing  
19 and Mr. Methot at the time that he was killed?

20 MR. RIOUX: So I -- from other information that was  
21 not provided here, and perhaps should have been, there were  
22 photographs taken of this hallway which did give us a sense of  
23 the scale there.

24 The short leg of that hallway, when you turn to go to  
25 the living room was some number -- perhaps at least five feet

1 or so in length. Not terribly long, but something on that  
2 order because you did -- it's a standard width sort of  
3 hallway. You turn the corner and a short distance to the left  
4 and you walk into the living room and that would mean that  
5 there's at least some number of feet of range between the  
6 location where it appears Otis Williams is describing himself  
7 standing.

8 Mr. Ortiz walked up from behind and discharged the  
9 firearm from approximately his shoulder towards the base of  
10 the door area where Mr. Methot was standing. So, it would be  
11 a range at least a number of feet, whereas the medical  
12 examiner report seems to indicate perhaps a matter of a half  
13 inch or an inch, perhaps even contact in that range of  
14 distance and --

15 THE COURT: He says anywhere from perhaps a half an  
16 inch to not -- maybe not more than 3, 4 or 5 inches.

17 MR. RIOUX: Something like that. And so  
18 additionally, Mr. Williams' statement does nothing to account  
19 for the round which was recovered from the stairway area. We  
20 do know that one round went through the balusters of the  
21 stairway in the approximate area of the third stair on the way  
22 up, crashing through the balusters and lodged in the wall  
23 behind -- to the right of the stairs.

24 From Mr. Williams' account, there's no way that that  
25 round could have ended up in that location from the layout as

1 I see it. I guess it is possible that another shot was fired.  
2 The revolver was recovered with -- it's a six-shot revolver --  
3 with three shots coming out of it or three rounds missing. So  
4 there was one round recovered from Mr. Methot's body, another  
5 round recovered that had penetrated the basement door and then  
6 the round from the stairwell.

7 THE COURT: Where is the basement door here?

8 MR. RIOUX: It would be the arrow letter B. It's  
9 under the top of the stairs, if you will.

10 THE COURT: Okay.

11 MR. RIOUX: And that would take you downstairs and  
12 another flight of stairs that was parallel to the stairs in  
13 the second floor would also descend to the basement with the  
14 rounds that were then recovered. So if it goes through a  
15 basement door, there's a 90-degree turn with some cabin  
16 shelving and it was recovered from that area.

17 We also have the testimony of Ms. Cox or Ms. Ball, which  
18 is completely unaccounted for in Mr. Williams' recitation of  
19 events. While it's possible perhaps he only witnessed a  
20 portion of the event, he couldn't see Ms. Ball. The struggle  
21 that ensued in the front hallway seems unlikely given the  
22 proximity of everyone and the sort of state of alert that  
23 everyone was on.

24 If we take Ms. Ball's statement as being accurate or  
25 close to accurate, what we do appear to know is that an

1 additional round was discharged from that front entry hall  
2 further up toward the exit and that somehow the parties ended  
3 up going further into the house and then a round was fired at  
4 approximately 90 degrees to the area of the original  
5 altercation to penetrate that basement door and ultimately the  
6 fatal shot that was also fired around that same area.

7 I had argued at trial that this demonstrated that when  
8 the gun came out, Mr. Methot did not retreat. When the first  
9 shot was fired, he did not retreat. After the first shot was  
10 fired, he pursued Mr. Ortiz deeper into the house. Mr. Ortiz  
11 went around the corner towards the living room and the  
12 distance between Mr. Ortiz and Mr. Methot was closed due to  
13 within approximately an arm's length because of the range of  
14 discharge of the fatal shot and it was at that point that the  
15 fatal shot was fired.

16 None of that is really accounted for in Mr. Williams'  
17 statement. His statements were very inaccurate. He clearly  
18 lied in some of these statements. They can't all be true and  
19 even the most recent statement doesn't account for many facts.  
20 In fact, he changed his story about other details about who  
21 took money or who was to deliver drugs, which is reasonably  
22 insignificant to the manslaughter charge in general, but  
23 perhaps undercut his reliability as to the source of  
24 information here.

25 So, while we did execute the agreement, while we have

1       made a recommendation to the Court, ultimately it's this  
2       Court's decision that is binding and it's a difficult issue to  
3       grapple with because of the acquittal in the state court  
4       matter. The question of whether there's an unlawful killing  
5       is fundamentally a significant one. That's all I have on that  
6       issue.

7               THE COURT: Thank you very much. Anything further?

8               MS. MCELWEE: Very briefly, Judge. I think if I'm  
9       focusing on what the defense highlights as their strongest  
10      argument or a strong argument -- I appreciate that he's  
11      staying with his plea agreement and he is -- what it comes  
12      down to from that perspective for me to suggest to you is that  
13      there are three shots fired. Everyone agrees there were three  
14      shots fired. One of those shots killed Mr. Methot. All three  
15      were fired by Mr. Ortiz and if you want to focus on Ms. Ball,  
16      she was able to get away and leave the room.

17              So enough distance and separation of those men occurred  
18      for her to be able to get away and I would suggest that when  
19      Mr. Rioux says what's missing from Mr. Williams' story is the  
20      defendant's view of what must have happened based on the  
21      ballistics, you now have someone who's standing there saying I  
22      don't know who Ms. Ball is because when Mr. Methot died, she  
23      wasn't standing there and that appears to be true.

24              And so if enough distance is placed between the two men  
25      and she can get away, then the fatal shot that could be --

1 appears to be scientifically determined to have been inches  
2 when Mr. Methot's face could also be Mr. Ortiz reaching over  
3 Mr. Williams to kill Mr. Methot, which is completely  
4 consistent with Mr. Williams' story. Thank you.

5 THE COURT: Thank you. So the parties here have  
6 raised a significant issue about the appropriate guideline  
7 calculation in this case.

8 To set the stage, the presentence report, which was  
9 revised on April 4, 2019, recommends a base offense level  
10 under section 2K2.1(a)(6)(A) of 14 because at the time of the  
11 offense, the defendant was a prohibited person.

12 Under section 2K2.1(b)(4)(A), a two level enhancement is  
13 recommended because one of the firearms the defendant  
14 possessed was stolen.

15 Under section 2K2.1(b)(6)(B), there's a four level  
16 increase for his possession in connection with another felony  
17 and in the presentence report, the probation office suggests  
18 the felony was murder and under section 2K2.1(c)(1) and  
19 2A1.3(a), the base offense level increases to 29 because the  
20 other felony was voluntary manslaughter, and under the  
21 recommendation of the probation office, he's given acceptance,  
22 which would result in a total offense level of 26.

23 He's a criminal history Category IV. Under that  
24 calculation, the low-end of the guideline range for jail is  
25 92 months and the high-end 115 months. The fine would be

1 25,000 to \$250,000. Supervised release one to three years and  
2 a special assessment of \$100.

3 This 92 to 115 months is in sync with the plea agreement  
4 where the defendant is allowed to urge the Court to impose a  
5 sentence of 92 months and the prosecution is allowed to  
6 recommend up to 115 months.

7 As I mentioned, the parties have entered into a plea  
8 agreement, which was dated January 2nd and January 4th, 2019.  
9 I reviewed that earlier today. Paragraph 3B states that the  
10 parties, quote, agree that the defendant used the firearm  
11 cited in the offense of conviction in connection with the  
12 commission of another offense, namely voluntary manslaughter,  
13 and that death resulted such that section 2A1.3 applies and  
14 that the defendant is subject to a base offense level of 29.

15 It also refers to these guideline agreements as  
16 recommendations; in other words, although Rule 11 does allow  
17 for the parties to enter into binding recommendations to the  
18 Court, this is not what is called a Rule 11(c)(1)(C) binding  
19 recommendation, and the Court has the inherent authority  
20 either to accept or reject the recommendation of the parties.

21 The further background to this issue is set forth in  
22 Paragraph 37 of the presentence report, which describes the  
23 state charge of murder and manslaughter against the defendant.  
24 The presentence report simply states that on June 25, 2018,  
25 the defendant was found not guilty of murder and manslaughter



1 after a trial in York County.

2 For many people, it might strike it as odd and unfair  
3 that a federal court could increase someone's sentence based  
4 on an allegation that he actually committed an offense with  
5 which he went to trial and was found not guilty and before  
6 1997, the 1st Circuit took a dim view of the use of what is  
7 called acquitted conduct to enhance a sentence.

8 Here, I'm talking about United States versus Lamoub,  
9 which is L-A-M-O-U-B, 71 F.3d 966, a 1995 1st Circuit case.  
10 In Lamoub, the 1st Circuit describes the notion that the court  
11 could use good conduct as, quote, utterly lacking the  
12 appearance of justice, end quote.

13 And there are other pre-1997 1st Circuit cases that  
14 express similar skepticism, but in 1997, the United States  
15 Supreme Court decided a case called United States versus  
16 Watts, which is 519 US 148 at 157. In Watts, the Supreme  
17 Court held that a prior jury acquittal of conduct, quote, does  
18 not prevent the sentencing court from considering conduct  
19 underlying the acquitted charge as long as that conduct has  
20 been proven by a preponderance of the evidence.

21 Since Watts, the 1st Circuit has acknowledged that a  
22 sentencing court may consider acquitted conduct in determining  
23 the sentencing enhancement. The case of United States versus  
24 DeSimone, which is 699 F.3d 113, a case decided in 2012, it's  
25 perhaps the seminal case, but in a somewhat analogous

1 situation, an arrest that did not result in a conviction have  
2 been the source of consternation on the part of the 1st  
3 Circuit. And just this year in the case of United States  
4 versus Marrero-Pérez, the 1st Circuit warned that trial judges  
5 should not use arrests alone to enhance a sentence without  
6 further proof of the underlying facts. That's at 914 F.3d 20,  
7 a 2019 case.

8 The most biting criticism of the use of acquitted  
9 conduct that I was able to find in this Circuit is found in an  
10 opinion by former Judge Nancy Gertner in United States versus  
11 Pimental, which is 367 F. Supp 2d 143, a 2005 case, and she  
12 questioned whether Watts was still viable after United States  
13 versus Booker, but she also expressed concerns about the  
14 impact of this rule in terms of the respect that the judicial  
15 system shall afford a jury as an institution if the judge uses  
16 conduct that a jury acquitted a person for to enhance a  
17 person's sentence.

18 So the summary of this is that I acknowledge that under  
19 the guidelines, and under both the Supreme Court and the 1st  
20 Circuit case law, I have the authority, and for that matter  
21 under the plea agreement I have the authority to enhance the  
22 defendant's sentence based on acquitted conduct.

23 I would note the standard of proof is different at  
24 trial. Of course it's beyond a reasonable doubt at the jury  
25 trial in state court where the defendant was acquitted and

1 here, the standard is a preponderance of the evidence, which  
2 is much lower.

3 And I acknowledge that there may be a good reason in a  
4 specific case to use acquitted conduct, but in general I fall,  
5 as a matter of judicial review more on Judge Redeem's cant, as  
6 shared by Judge Gertner, that simply because, quote, a  
7 practice is constitutional does not make it wise, and that's  
8 found in the case of United States versus Lumbar, 102 F.3d 1,  
9 a 1996 case.

10 So that's my general view of the use of acquitted  
11 conduct, but I acknowledge that the law permits me to do so  
12 and I take my obligations seriously.

13 The issue here is found under the language of section  
14 2K2.1(C)(1) and says this; if the defendant used or possessed  
15 any firearm cited in the offense of conviction in connection  
16 with the commission of another offense, apply D. If the  
17 death -- if death resulted, the most analogous offense  
18 guideline is Chapter 2 Part A (1) homicide. Chapter 2(A)(1)  
19 contains five levels of offenses against a person involving  
20 death and the probation officer -- office and the Government  
21 proposed the Court should use section 2A2.13, voluntary  
22 manslaughter, and as I mentioned this results in a base  
23 offense level of 29.

24 Section 2A1.3 voluntary manslaughter refers to a number  
25 of statutory provisions in federal law. The most relevant

1       being 18 USC, section 1112. That provision is the voluntary  
2       manslaughter and involuntary manslaughter provisions of the  
3       federal statute.

4               Turning to voluntary manslaughter, section 1112(A) says,  
5       quote, manslaughter is the unlawful killing of a human being  
6       without malice, and it defines voluntary manslaughter as,  
7       quote, upon a sudden quarrel or heat of passion.

8               I'm going to turn back to that at the end, but I'm now  
9       going to turn to what evidence is before me. The evidence, as  
10      I've mentioned, is in the PSR said the defendant admitted the  
11      contents of it at the outset of this hearing, Government's  
12      Exhibits 1 through 5, and then Defendant's Exhibits 1 through  
13      9.

14              Preliminarily, I would note that the circumstances of  
15      Jonathan Methot's death require me to enter into really a  
16      dark, chaotic environment world. Most, but not all, of the  
17      people involved in this tragedy were drug addicts at the time.  
18      Many of them, not all, of the critical witnesses were either  
19      using drugs or alcohol during the hours leading up to Mr.  
20      Methot's death.

21              There is a well-known expression about the fog of war,  
22      and here it seems to me I'm presented with the facts of the  
23      fog of crime. There's a certain amount of chaos, emotional  
24      reaction, retrospective analysis and any violent crime -- and  
25      here we have a violent crime that is compounded with drugs,

1 sex trafficking, prostitution, violence, and the same thing,  
2 I'm not denigrating anyone. My job unfortunately has  
3 routinely brought me into contact with people who suffer from  
4 addiction and suffer profoundly from addiction and their lives  
5 go into a black hole for at least a period of time.

6 It's always to me very sad they've reached a terrible  
7 rough spot in their lives and despite this rough spot,  
8 witnesses who have terrible addictions often tell the truth.  
9 But they also, as is evident in this case, often sometimes  
10 pull themselves out of the black hole they're in and become  
11 more wiser and more disciplined people. But my assessment of  
12 the probative value of their testimony is somewhat handicapped  
13 by the limitations of their own perceptions.

14 I see at least three versions of what happened when  
15 Jonathan Methot was killed. I'm going to refer to them as  
16 Brittany Cox, because that's what she was known as back then,  
17 Otis Williams and the defendant's. They're not all entirely  
18 inconsistent as has been pointed out before I recite these  
19 versions as for background.

20 In September of 2016, Brittany Cox was about 30 years  
21 old and, as I mentioned more recently, she has certainly  
22 turned her life around, which is really edifying, but in  
23 September of 2016, she was addicted to crack cocaine and  
24 heroin and her addiction had led her to prostitution to  
25 support her habit.

1           She had actually put an ad, essentially a prostitution  
2     ad, in BackPages looking for clients and on September 25,  
3     2016, the day before Mr. Methot was killed, Ms. Cox received a  
4     message from the defendant and the defendant told her that he  
5     was not looking for sex, but he wanted her to drive him  
6     around. Ms. Cox said she thought it was amazing compared to  
7     what she had been doing.

8           Ms. Cox traveled to Westbrook, met the defendant, and he  
9     told her he could not see, he had bad vision so he needed a  
10    driver. Ms. Cox and the defendant smoked marijuana and at  
11    that time the defendant showed her a handgun. Ultimately, Ms.  
12    Cox drove the defendant at his direction to a motel in  
13    Biddeford where they met the defendant's then girlfriend, a  
14    woman by the name of Courtney who was at a Biddeford hotel.

15          They had some dispute and Mr. Ortiz was not happy, but  
16    after some further driving, Ms. Cox drove the defendant to  
17    West Cutts Street in Biddeford where this -- where Mr. Methot  
18    was killed.

19          When the defendant and Ms. Cox arrived at West Cutts  
20    Street, Ms. Cox went inside and she found Courtney, the  
21    defendant's girlfriend, as well as two other women sitting  
22    there. They were not using drugs at that point. Also present  
23    was this man Devon Otis Williams.

24          There's some controversy as to whether Otis Williams,  
25    which is the name he goes by, was dealing drugs for the

1 defendant or was dealing drugs for somebody else. I don't  
2 think it's really essential for me to resolve that and  
3 instinctively, I have the sense that he probably was dealing  
4 for the defendant, but he was probably also dealing for other  
5 people as well.

6 Three of the women, including Ms. Cox, started smoking  
7 crack and Otis and the defendant started drinking. At that  
8 time the defendant and Courtney went out to get some  
9 cigarettes and they disappeared for a period of time. While  
10 the defendant and Courtney were gone, Jonathan Methot came to  
11 the apartment house.

12 Now, I should say a word about this apartment house.  
13 Some witnesses describe it as a trap house or a flophouse  
14 because that's where drugs were sold and taken. It was  
15 described as a mess, covered with junk everywhere. Ms. Cox  
16 recognized Mr. Methot from her use of drugs and Mr. Methot and  
17 Otis Williams went off somewhere.

18 Next thing that happened is Otis Williams gets into a  
19 furious argument with a woman who lives upstairs and,  
20 according to Ms. Cox, the woman was being very derogatory to  
21 Mr. Williams and Ms. Cox, which is established on the record,  
22 texted the defendant, and this was about midnight on  
23 September 26, 2000 -- just after that, September 26, 2016, and  
24 she wrote get in here, the bitch upstairs is starting with  
25 your boys. That's some indication though that Mr. Williams

1 was, in fact, looking for the defendant.

2 The defendant returned with Courtney and argued with the  
3 woman upstairs and at this point, Mr. Methot and Otis Williams  
4 began arguing. Mr. Methot had paid \$40 to Mr. Williams for  
5 some crack and Mr. Williams, according to Mr. Methot, had not  
6 delivered the crack, or at least had not delivered it as  
7 promptly as he wanted, and it was at this point the defendant  
8 who returned became involved in the argument between Mr.  
9 Methot and Mr. Williams, and that's a fair summary or  
10 background that led up to this shooting.

11 The lawyers have presented me with three different  
12 versions. Some of them, as I've mentioned, are similar. I am  
13 handicapped because I don't know these people. I don't --  
14 never have seen, to my knowledge. Brittany Cox, I've never  
15 seen Otis Williams. I have seen the defendant, but I can't --  
16 but he has never testified before me, so I'm at somewhat of a  
17 disadvantage.

18 I'm also a little -- although the matter was  
19 investigated, there are other witnesses or potentially other  
20 witnesses in the house at the time, other women and I don't  
21 know what they know. They may have heard something that would  
22 confirm or disprove some of this, but I don't know anything  
23 about what they would say.

24 Turning to Brittany Cox, she said she went to the  
25 bathroom and when she walked out, she saw the defendant and



1 Mr. Methot in the hallway. She said that Mr. Methot had his  
2 hands around the defendant's throat and was choking him and  
3 that the defendant was losing color. His eyes were bugging  
4 out. This seems like a pretty serious strangling from what  
5 she described.

6 She began banging on Mr. Methot's arm and he finally let  
7 go of the defendant. The defendant and Mr. Methot then  
8 stepped away to confront each other and the defendant pulled  
9 out a gun. In response to what the defendant did, Mr. Methot  
10 then grabbed Brittany Cox's sweatshirt, holding her against  
11 him like a shield.

12 Now, at that point the defendant has the gun out and  
13 Brittany Cox said that she struggled to get away because she's  
14 facing the end of the gun. As she's struggling to get away,  
15 the defendant shot the pistol. Now, immediately after that,  
16 Mr. Methot loosened his grip on Ms. Cox and Ms. Cox ran toward  
17 the defendant and basically steps out by the defendant and she  
18 initially tried to get out a blocked door and finally escaped  
19 out a window.

20 When she got to the car, amazingly the defendant was  
21 already there and Courtney was already there along with two  
22 other women. She thought, based on her interaction, that it  
23 was that shot, while she was being held by Mr. Methot, that  
24 killed this man and she arrived at that conclusion mostly  
25 because he released her.

1           Also of interest is the fact that at one point Ms. Cox  
2 started to cry. This was when they were driving around after  
3 the incident and she said to the defendant thank you for not  
4 shooting me and he replied why would I shoot you, you're my  
5 friend? The defendant then also went on to say that she  
6 shouldn't cry for Mr. Methot because he tried to use her as a  
7 shield.

8           Now, Otis Williams has been presented as a potential  
9 witness here. He was clearly at the scene. He has presented  
10 a number of different versions of this event. The first was  
11 on the date of the incident on September 26, 2016 -- and  
12 Detective Ross of the Maine State Police interviewed him. He  
13 initially denied being at West Cutts Street and then he said  
14 he had been drinking with the defendant.

15           He said he went downstairs to get his sweatpants and  
16 when he came back up, one of the neighbors hit him with a  
17 baseball bat and he saw a dead body on the front porch.

18           The second interview took place on May 9, 2016.  
19 Detective Warren Hedstrom of the Maine State Police  
20 interviewed him and at that point, Mr. Williams confirmed he  
21 knew most of the people at West Cutts and he said he had been  
22 drinking heavily and he did not remember much and he learned  
23 mostly before the shooting from others. And he sat down a  
24 third time May 24, 2018, with Detectives Hedstrom, Ross and  
25 Assistant State Attorney Meg Elam.

1           At that point, Mr. Williams said that his father had  
2           told him to tell the truth. He said that Mr. Methot had  
3           accused him of taking money from him and that Williams had  
4           denied it. As we've heard, Mr. Williams said he was standing  
5           in the doorway at the living room and Mr. Methot was standing  
6           with his back to the basement door. The defendant said he  
7           came up from behind him, put a gun on his shoulder and shot  
8           Mr. Methot three times.

9           Then we have the defendant's version, which is actually  
10          set forth in Paragraph 16 of the presentence report. The  
11          defendant says he was trying to calm Mr. Methot down. Mr.  
12          Methot tried to choke him or started to choke him and he  
13          couldn't breathe and he felt light-headed. He confirmed that  
14          Ms. Cox hit Mr. Methot in the arm and he let go, but he did  
15          not leave and then Mr. Methot was still angry.

16          The defendant says he pulled a gun because he thought  
17          Mr. Methot would attack again and he thought the gun would  
18          scare him off. At that point, Mr. Methot grabbed Ms. Cox and  
19          she looked scared. The defendant fired the gun and Ms. Cox  
20          ran off, but Mr. Methot was not scared, according to the  
21          defendant, and he started coming at him. The defendant said  
22          he backed off, but Mr. Methot kept coming and that he fired  
23          two times and the last one stopped Mr. Methot.

24          So, which of these versions does the Court accept?  
25          First, regarding Otis Williams' version, I find that version

1 to be improbable. First, he's given three different versions  
2 in three different interviews so he has a basic credibility  
3 issue.

4 Second, there was an autopsy by the State Medical  
5 Examiner, a doctor by the name of Mark Flomenbaum. He said  
6 that Mr. Methot was killed by a shot to his face and the cause  
7 of death is listed as gunshot wound of face and neck with  
8 perforation. And he offered testimony that because of gun  
9 powder residue around the entrance wound, the gun had to have  
10 been very close to Mr. Methot's face. He put it somewhere  
11 between half an inch to 3 or 4 inches away, and I just simply  
12 couldn't put together that closeness of that shot with his  
13 description of the defendant standing behind him and shooting  
14 over his shoulder. I think the distance is just incompatible  
15 with the science.

16 I found Brittany Cox's version more likely than Otis  
17 Williams', but I'm really having a very difficult time  
18 concluding that the defendant shot Mr. Methot in the face  
19 while Mr. Methot was holding on to Ms. Cox.

20 My skepticism is based on a couple of things. First,  
21 Ms. Cox said she drove to Westbrook right after the incident.  
22 She said that when she got to Westbrook -- and you remember  
23 they had -- the other women were there with her and when they  
24 entered the apartment, she immediately told the other women to  
25 shower and change their clothes, but she herself went into the

1 bathroom apparently and she wore the same clothes the rest of  
2 the day. I find that hard to believe.

3 That if, in fact -- so you have Mr. Methot holding her  
4 close, grabbing on to her sweatshirt and then a significant  
5 wound, something that's significant enough to kill Mr. Methot  
6 in his face, and I found it hard to believe that she would not  
7 shower and change her clothes. It's just too close. All of  
8 the other women immediately did that and she remained in the  
9 same clothes all day. I just found that hard to understand.

10 The other part that I found unusual is Ms. Cox's  
11 statement to the defendant after the shooting. What she said  
12 to the defendant was this: Thank you for not shooting me like  
13 you could have shot me. So Mr. Methot has Ms. Cox by the back  
14 of the sweatshirt, she's squirming to get away and the  
15 defendant fires a shot that just misses Ms. Cox's head and  
16 strikes Mr. Methot.

17 It strikes me as you would not be thanking someone who  
18 had done that. You'd be saying you almost killed me. You  
19 wouldn't be saying thank you for not killing me. You'd be  
20 saying literally the bullet went right by my face and killed  
21 someone else. You'd say my God, you nearly killed me; what  
22 were you doing?

23 So I'm willing to credit Ms. Cox's testimony up to the  
24 point of the first shot. I also note that she said she  
25 believed that Jonathan Methot was struck by the first shot

1       because he let go of her, but that's equally consistent with  
2       the defendant firing a warning shot, startling Mr. Methot and  
3       having him release her for all sorts of reasons, among which  
4       might have been that he didn't want her to die because he now  
5       knew at that point that the defendant was deadly serious.

6               So then Ms. Cox runs away and according to what is  
7       before me, there are only two people who know what happened.  
8       One of them is sitting in this room and the other is dead.  
9       What we do know is that Mr. Methot was unarmed and the  
10      defendant had the firearm, which was loaded. The defendant  
11      says Mr. Methot, let go of Ms. Cox after the first shot and  
12      then started toward him and when he came near, effectively the  
13      defendant shot him in the face.

14             We really can't know what the truth is. I view the  
15      defendant's version as possible, but against that version is  
16      the idea that Mr. Methot -- placed Mr. Methot alone with a man  
17      who just shot a gun, he knew the defendant had a gun, he knew  
18      it was loaded, he knew he had fired a shot and yet he didn't  
19      turn and run away. According to the defendant, he marched  
20      toward him, which would be, I should say, foolhardy.

21             I also found it interesting -- I quoted the defendant in  
22      what he said to Ms. Cox afterwards and the defendant said to  
23      Ms. Cox when she thanked him for not shooting her, he said  
24      first I didn't shoot you because you're my friend. Now, that  
25      to me -- and he also went on to say the defendant (sic) was a

1       coward because he used you as a shield.

2               These statements by the defendant himself suggested the  
3       defendant may have shot Mr. Methot because he thought he was a  
4       coward and because he didn't consider him a friend.

5               There is some evidence that the defendant was dismissive  
6       and derogatory toward people who are addicted and Mr. Methot,  
7       unfortunately, from the information before me, had a  
8       significant problem with drugs.

9               It strikes me that there are really two possibilities.  
10       One is these two men are standing in the hallway and, as Mr.  
11       Ortiz said, Mr. Methot came toward him and the defendant shot  
12       him. Now, if that happened, it strikes me that -- and I'll  
13       talk about self-defense -- it strikes me that in all  
14       likelihood self-defense is applicable. After all, the man  
15       approaching Mr. Ortiz was the man who, but for Brittany Cox,  
16       may have strangled him to death so he knew that if Mr. Methot  
17       was approaching him that he would suffer the same fate if he  
18       didn't protect himself.

19               The other alternative is that the defendant, who has a  
20       terrible temper and he talks about his temper in a Facebook  
21       post having been -- having escaped suffocation by Mr. Methot  
22       was having none of him and just got mad, took the gun, walked  
23       up and killed him. Based on the evidence however, and it  
24       pains me to describe the evidence in detail, I cannot find  
25       that the defendant has proven that the -- that the Government

1 has proven that the defendant committed voluntary  
2 manslaughter.

3 Voluntary manslaughter, as defined under federal law,  
4 requires to be a heat of passion. That's under the statute  
5 and under United States versus Holmes, which is 632 F.2d 167,  
6 a 1980 case. The 1st Circuit wrote guilt is established when  
7 the defendant inflicted the injury that caused the death and,  
8 quote, the homicide was permitted without justification or  
9 excuse, end quote.

10 So the issue narrows down to self-defense. There are  
11 three elements under 1st Circuit law. First, the defendant  
12 acted under an immediate threat of serious bodily injury or  
13 death; second, that he had a well-rounded belief that the  
14 threat would be carried out; and third, that he had no  
15 reasonable opportunity to escape or otherwise frustrate the  
16 effect.

17 If it appears true Mr. Methot had strangled the  
18 defendant to the point of his eyes bulging and his face losing  
19 color, then the defendant had acted under an immediate threat  
20 of serious bodily injury or death as Mr. Methot approached  
21 him. He had a well grounded belief that Mr. Methot would  
22 strangle him again, or at least try to, and given the close  
23 quarters and Mr. Methot's approach -- and we're talking here a  
24 matter of feet and maybe inches -- it was reasonable to  
25 conclude that there was no effective opportunity to escape or



1 frustrate the threat.

2 The other alternative is the one that I just described  
3 and that simply is that the defendant got angry, felt the rage  
4 of what Mr. Methot had done to him and decided just to execute  
5 him. But I have to say there's virtually no evidence of that  
6 occurring in what I have before me. I just have no evidence  
7 of -- the only evidence I have is from the defendant and the  
8 defendant's story as we heard is that Mr. Methot came up to  
9 him and so to arrive at that conclusion would require me to  
10 speculate.

11 Under the law, the burden to prove the enhancement is on  
12 the Government and based on what the Government has produced  
13 and the defendant, I do not find they've produced sufficient  
14 evidence first to find out what actually happened. I really  
15 am still uncertain exactly what happened in that critical few  
16 seconds when no one but the defendant and Mr. Methot were  
17 standing looking at each other at West Cutts Street, or to  
18 find that the defendant's version did not take place and under  
19 either, the enhancement fails.

20 I will say this doesn't end the guidelines analysis. I  
21 noted that the probation office recommended a four level  
22 enhancement under section 2K2.1(b)(6)(B) for possession of a  
23 firearm in connection with another felony.

24 The PSR says the other felony is murder, but there is,  
25 in my view, ample evidence that the defendant possessed a

1 firearm in connection with the drug dealing. Paragraph 10  
2 says the defendant possessed a revolver on numerous occasions  
3 and often waved it around.

4 Christine Palmer said that she was a drug addict at the  
5 time and that she went to West Cutts Street to get drugs from  
6 the defendant. She says she saw the defendant at West Cutts  
7 Street with a gun many times and she thought he believed he  
8 was a big man waving the gun around. All that is sufficient,  
9 in my view, to link the defendant's gun possession more likely  
10 than not to his drug trafficking and, in fact, however this is  
11 defined or however we analyze the evidence, the defendant's  
12 possession of the firearm that led to Mr. Methot's death was  
13 over a dispute about a drug sale.

14 The PSR and the exhibits, including the Facebook  
15 entries, also strongly suggest the defendant was still  
16 involved in sex trafficking as of September 2016 and I find  
17 his possession of the firearm was directly related to that as  
18 well and I'll apply the four level enhancement under section  
19 2K2.1(B)(6)(b).

20 The sentencing findings are as follows: The base  
21 offense level is 14 under section 2K2.1(A)(6)(a). Because one  
22 of the firearms possessed was stolen, two levels are added  
23 bringing the offense level to 16. Because the defendant used  
24 or possessed a firearm in connection with another felony  
25 offense, four levels are added bringing the offense level to

1       20. The defendant has accepted responsibility for the  
2 offense. The offense is reduced three levels to 17. The  
3 defendant's criminal history category is Category IV.

4             For a total offense level of 17 and a criminal history  
5 category of IV, the applicable guideline sentence range is 37  
6 to 46 months.

7             The defendant is not eligible for probation. Supervised  
8 release is 1 to 3 years. Fine range is from \$10,000 to  
9 \$250,000. The defendant does not have the ability to pay a  
10 fine. A special assessment of \$100 is mandatory.

11            Other than the objections previously raised, does the  
12 Government have any objection to those findings?

13            MS. MCELWEE: No, Your Honor, other than I, just for  
14 purposes of the record, Judge, could just make two comments.

15            I just want to make a note, in response to your  
16 thoughtful analysis, I just want to indicate on the record  
17 that another point the Court could look at in finding which  
18 version to believe would be acknowledging the defendant's  
19 acknowledgement that it was voluntary manslaughter as part of  
20 the plea agreement.

21            That's in the prosecution version and his waiver of any  
22 objection to the presentence report as written, and also just  
23 to point out that in the defendant's exhibits under the report  
24 of the State Medical Examiner at 77, the medical examiner  
25 notes that the direction of the bullet that caused Mr.

1 Methot's death was downward, which would suggest to me that he  
2 couldn't have been coming at him since he was taller than Mr.  
3 Ortiz and Mr. Methot had to have been already lower than Mr.  
4 Ortiz at the time of the shooting.

5 I just want to state that point on that issue. I accept  
6 your findings and I have no other objections.

7 THE COURT: All right, thank you. Mr. Rioux?

8 MR. RIOUX: Your Honor, I don't have any objection  
9 to the calculation. I don't know if I should respond to the  
10 point that Ms. McElwee raised, but the downward trajectory did  
11 come up at trial. There was significant cross-examination  
12 about that. It wasn't copied as a sentencing exhibit, and  
13 there are certainly some questions to whether it was, in fact,  
14 downward and whether that would be at all inconsistent with  
15 what we offered as a defense.

16 I would argue it was completely consistent with the  
17 defense. I didn't think it was a particularly significant  
18 issue at the trial, but that wasn't copied to the Court so  
19 that's all.

20 THE COURT: All right, thank you. Counsel, would  
21 you like to be heard on sentence?

22 MS. MCELWEE: Yes, Judge. As the Court is aware  
23 from my most recent sentencing memorandum in the event that  
24 you ruled as you have, the Government has moved for a variant  
25 sentence above the advisory guideline range, which is now

1       determined to be 37 to 46 months.

2               Today, Judge, you will sentence Timothy Ortiz for his  
3       illegal firearm possession in the fall of '16 in Biddeford,  
4       Maine, and unlike many, if not all, because I, of course,  
5       don't know every case you have handled in the U.S. District  
6       Court in Maine, but certainly in terms of ones I'm aware of,  
7       unlike many of the federal gun defendants all of them  
8       sentenced in Maine, Mr. Ortiz's possession resulted in the  
9       death of another human being, and today you will decide in  
10      light of the section 3553(a) factors, that is those factors  
11      which Congress has decided what is an appropriate sentence for  
12      you to consider, what sentence is appropriate but not greater  
13      than necessary to accomplish the enumerated goals of  
14      sentencing, and I'd like to highlight some of those with the  
15      Court now from the Government's perspective on those factors  
16      for the benefit of the family of Jonathan Methot, who are  
17      present.

18              First, the Court must consider the nature and  
19      circumstances of the offense. Mr. Ortiz, as reflected by the  
20      presentence report and the Government's and defense exhibits  
21      presented to you today, came to Maine in 2015 for the purpose  
22      of selling illegal drugs. While doing so, it became clear  
23      that he, in making money for himself, exploited vulnerable  
24      Mainers, individuals addicted to drugs at the start of what  
25      would become an intense opioid crisis in this district, and

1 many of those addicts were women who, as the Court is all too  
2 familiar, were in a dark place in their lives and had begun to  
3 engage in prostitution.

4 At the time of his possession of the gun that is alleged  
5 in the indictment, Mr. Ortiz had come from a very short, but  
6 significant criminal history in New York and I'm just going to  
7 dip into the history and characteristics of the defendant if  
8 you'll indulge me. It begins in New York at the age of 18 and  
9 he starts off with possessing counterfeit bills as alleged in  
10 Paragraph 31.

11 While he's at the jail where he met --

12 THE COURT: It says 20.

13 MS. MCELWEE: Excuse me, you're absolutely right. I  
14 misspoke. At the age of 18, as reflected in Paragraph 36,  
15 he's alleged to have physically assaulted two victims and  
16 forcibly stolen their phones.

17 Then at the age of 20, he possesses the counterfeit  
18 bills as reflected in Paragraph 31, you are correct. Those  
19 allegations in Paragraph 36 are non-convictions, Judge.

20 THE COURT: Right. And there's a -- I'm not sure  
21 what the 1st Circuit wants me to do with --

22 MS. MCELWEE: Right.

23 THE COURT: -- that.

24 MS. MCELWEE: That's why I used the word alleged,  
25 because he was not convicted of that conduct.

1           THE COURT: I think the -- it's really hard to  
2 understand where we are on that in the 1st Circuit.

3           We have a very strong case, which I cited before, the  
4 Marrero case, which says we cannot use an arrest for any  
5 purposes under -- for sentencing purposes.

6           We then have the subsequent case by Judge Lynch that  
7 says we can use it, but only if there's outside evidence that  
8 supports the facts underlying the arrest.

9           I think for our purposes here today, it's not going to  
10 make much of a difference and I think it's probably better  
11 that we do not consider Page 16. I have -- 18, arrest. This  
12 was in the Bronx and the disposition says no disposition  
13 listed, so I think it's probably wiser not to consider that.

14           MS. MCELWEE: Okay. At the age of 20 we have the  
15 incident in Paragraph 31 with the counterfeit bills. It  
16 resulted in a six-month jail sentence because it was lumped in  
17 at a dispositional phase at Paragraph 32 where the defendant  
18 bail jumped and failed to appear in court. While he's in the  
19 House of Corrections, he begins what I would characterize as a  
20 bit of a thread that takes us all of the way to the night of  
21 Jonathan Methot's killing and, that is, Mr. Ortiz's mouth  
22 getting him into trouble.

23           He's at the House of Corrections and he is being  
24 disciplined for something relatively minor. They're taking a  
25 prohibited piece of clothing from him and he says you're a

1       fucking bogo, this is fucking shit, suck my dick. That's  
2       where he starts. That's kind of his baseline.

3               At the age of 21 with that somewhat limited history, but  
4       still so young, he comes to Maine to sell drugs and he's  
5       alleged to be engaged in sex trafficking that he's later  
6       convicted of as reflected in Paragraph 33, if I have my  
7       numbers right.

8               THE COURT: Right.

9               MS. MCELWEE: And then that becomes his predicate  
10      felony for our offense, and the Court can read that paragraph,  
11      that it involves him taking advantage of young female addicts  
12      as I described previously who he is pimping out in a hotel  
13      room with drug paraphernalia to include tourniquets,  
14      hypodermic needles, digital scales and a box of unused plastic  
15      baggies and the young women tell the police when he arrives  
16      that he has forced them into prostitution for exchange of  
17      drugs, been supplying her with heroin for approximately 1 week  
18      to keep her addicted so she can work as a prostitute.

19              During that offense, a firearm with an obliterated  
20      serial number is found in the defendant's possession and that  
21      still today sits in the Portland Police Department in their  
22      evidence locker.

23              Mr. Ortiz was not yet a felon and so he arguably was not  
24      prohibited from possessing that gun by any federal statute,  
25      other than in accordance with his alleged and then later



1 convicted aggravated sex trafficking and unlawful furnishing  
2 scheduled drugs.

3 THE COURT: This is consistent, by the way, with the  
4 Facebook posting that you introduced into evidence and the  
5 Facebook posting -- I'm talking here about use of drugs to  
6 keep women -- or start women or keep women involved in  
7 prostitution and says if I were to get my hands on her, she  
8 will be a victim.

9 MS. MCELWEE: That's absolutely correct and that's  
10 the post that he posts on --

11 THE COURT: August 7th, 2017.

12 MS. MCELWEE: That's correct, Judge. Same summer.  
13 So he is convicted of that. He is given one year in jail to  
14 serve, a thousand dollar fine and three years of probation and  
15 then transferred his probation to New York where he returns  
16 presumably to live with his friends and family.

17 And just a summer later after he serves that sentence,  
18 he returns to Maine in violation of his probation where he  
19 absconds and promptly just gets right back to it at the drug  
20 house at West Cutts Street in Biddeford where he now is in  
21 possession of two guns, one being an AR 15 and a ballistic  
22 vest that you see in the Facebook post where he makes  
23 reference to continuing to feed people addiction -- addicted,  
24 the drugs to which they're addicted and makes reference -- or  
25 maybe what I would characterize as jokes about domestic

1 violence.

2 He himself identifies his home, the home in which Mr.  
3 Methot died, as his trap and jokes about his being ready for  
4 war and who looks to smoke and then we, of course, know what  
5 happens on September 25th into the 26th at that same home,  
6 which results in Mr. Methot's death. And I know I argued in  
7 my memo, because obviously that's much more significant now in  
8 light of the fact that you find that Mr. Ortiz may have been  
9 acting in self-defense, but that we hadn't proven voluntary  
10 manslaughter, even if he was acting in self-defense we are  
11 still talking about a firearm possession in violation of  
12 federal law that looks nothing like those which we see  
13 typically here.

14 If we're looking at a spectrum, if we're looking at the  
15 history and characteristics of this defendant, the nature and  
16 circumstances of the offense and the need to avoid unwarranted  
17 sentencing disparities, a third factor, we have the spectrum  
18 of perhaps a hunter benignly using a gun to take it hunting  
19 when he is a felon.

20 THE COURT: Yeah, but that's including -- some of  
21 that is included in the enhancement. You've got the stolen  
22 firearm.

23 MS. MCELWEE: It absolutely is.

24 THE COURT: And you've got possession of the firearm  
25 in connection with another felony, so they are both enhanced.

1 If he had just been what you're describing, he would be far  
2 lower in terms of guidelines.

3 MS. MCELWEE: That's correct. But I do think that  
4 given that the four level enhancement addresses only the drug  
5 trafficking and not the fact that he was engaged in the -- I  
6 think it's more the climate of his possession that disturbs me  
7 most that puts it outside the guidelines for my purposes, is  
8 that you don't have someone -- and I don't want to use the  
9 word innocently -- but benign possession just versus what Otis  
10 said, he was reckless, thought he was invincible. Hanging out  
11 in a trap house with a gun that he isn't even suppose to look  
12 at and have with him, that he's flipping and playing with,  
13 that he had on him at the time where they have this dispute  
14 over a \$40 drug debt that results in someone's death.

15 And so if you're looking at the need for just  
16 punishment, that is, addressing Mr. Ortiz's possession of a  
17 gun he shouldn't have even had, with this significant -- I  
18 mean criminal history IV, I'm not sure -- I'm not sure puts it  
19 in the right light because he's on probation -- and you get  
20 points for being on probation -- but it's sending the message  
21 to this man the need to protect the public from Mr. Ortiz from  
22 further crimes and the respect for the law that Mr. Ortiz's  
23 PSR reflects he doesn't have at all. I would ask the Court to  
24 still impose a sentence that the Government recommended of  
25 115 months.

1 THE COURT: Thank you very much. Mr. Rioux.

2 MR. RIOUX: Thank you, Your Honor. Your Honor, this  
3 is a very difficult case. Hanging over us all, I think, is  
4 the death of Mr. Methot and the tragedy that that is; whether  
5 we call it self-defense, manslaughter, recklessness or an  
6 accident. It is a real tragedy that cannot be undone and that  
7 must be acknowledged.

8 But at the same time, I think the Court needs to  
9 recognize the import of imposing a sentence that is in line  
10 with the factors that the Sentencing Commission recognized and  
11 that recognize the seriousness of his conduct, but to resist  
12 the temptation to impose a sentence for another offense or for  
13 characteristics of this offense which were not proved or were  
14 questionable.

15 We're asking the Court to impose a sentence that is at  
16 the low-end of the applicable guideline range. We have  
17 recommended that guideline range to be a different range and I  
18 think the same arguments would apply.

19 Mr. Ortiz, as the presentence report points out, has a  
20 troubled past and brings with him to this day the significant  
21 baggage of a very difficult childhood, brought up in an area  
22 of high crime and violence where he witnessed violence,  
23 witnessed death, was surrounded by criminality.

24 He grew up without the benefit of substantial  
25 significant parenting by his biological parents in some

1       respect, and his father has not been --

2               THE COURT: I thought his mother was quite involved  
3       in his -- in the presentence report the father was not, but  
4       the mother was very involved. He had -- he had an aunt who  
5       was very close to him.

6               MR. RIOUX: That's right.

7               THE COURT: That he relied on and then there was the  
8       paternal grandmother who owned restaurants and he worked in  
9       restaurants.

10              MR. RIOUX: Yes, sir.

11              THE COURT: I have -- there are some people who live  
12       in a tough area and it's bleak, but I didn't see that with  
13       him. I thought that his -- it sounded like he came from a  
14       good family, a hardworking family.

15              MR. RIOUX: Yes, Your Honor.

16              THE COURT: And it sounded to me like -- and so  
17       going the way of his grandparents and working in the  
18       restaurant and discipline in his life, he decided to go for  
19       the street.

20              MR. RIOUX: Yes, Your Honor. Your Honor, he did  
21       have some strong environment and family who is still  
22       supportive of him today and is here to support him --

23              THE COURT: Right.

24              MR. RIOUX: -- at great effort and expense to them.  
25       His aunt was a very important figure in his life, who recently

1       passed away during his incarceration, and she was one of the  
2       large parental figures in his life and he was lucky to have.

3               So I don't mean to say that he was homeless or had no  
4       support, but he did --

5               THE COURT:   You didn't.   He was -- I guess his  
6       mother had a boyfriend who wasn't very nice to him, but  
7       there's no indication of any abuse.

8               MR. RIOUX:   Yes, Your Honor.   That's true.   He was  
9       not -- no history of -- some people who do come before this  
10      Court, as far as violence and physical and sexual abuse,  
11      nothing like that.   But -- and many people under worse  
12      circumstances will grow up to do much better and some people  
13      under right circumstances may end up doing worse.   So it's  
14      certainly tough to draw a correlation.

15              I certainly don't mean to excuse the conduct based on  
16      that, but as many who come before him, he has, as the Court  
17      points out, sort of taken a wrong path.   Could have gone the  
18      way of his industrious grandmother.

19              THE COURT:   His mother was working at a clothing  
20      store, manager of a clothing store in Florida.

21              MR. RIOUX:   Yes, Your Honor.   And certainly he is,  
22      as this Court can well see, had a much more misguided path.  
23      But what we do see is that -- before this Court is a man who  
24      has been locked up, for some years been in custody.   He is a  
25      young man still, about to be 26 years old, and he's a man who

1 has the potential for a good future, potential for a good life  
2 with the help of his family who is going to be there to  
3 support him.

4 He has in, I would say, a recent year and a half or so  
5 made some good progress in my experience with him. His  
6 experience in the correctional system in Strafford County  
7 where he's held, where he's done much better than in  
8 Cumberland County or the York County Jail.

9 He's a man who is intelligent, who is reasonably  
10 articulate, who has goals and aspirations and who acknowledges  
11 that he's made horrific mistakes, and the worse of them being  
12 the incident of September 26th that led to the death of Mr.  
13 Methot.

14 What we're asking the Court for is for Mr. Ortiz to have  
15 a chance at success. I think that probation supervision this  
16 Court will impose is going to be essential in that respect. I  
17 note -- and we discussed the special conditions that will  
18 include the Job Corp training program, to do community service  
19 work if not employed, things of this nature, these are going  
20 to be essential -- the workforce development program, not the  
21 Job Corp, but work force development program. He's a man who  
22 has had some success working in the restaurant industry with  
23 family and things of that nature and can find that success  
24 again.

25 The disrespect -- the language that we see in the

1 Facebook post, the language that sort of came into the trial  
2 is very troubling, but it's also indicative of, how you say,  
3 the street sort of life that he has been out of for years now  
4 and can make a clean break upon his release.

5 He's clearly got a significant sentence to serve no  
6 matter what this Court does and I think he has good prospects  
7 for success.

8 I'd like to present to the Court the individuals -- they  
9 don't have a specific verbal address for the Court, but I  
10 would like to introduce the Court to several people here.  
11 Shyla, who is on the Court's right, a long time friend of Mr.  
12 Ortiz is in the court. Nancy Canter is here to support, as  
13 well a friend of Mr. Ortiz for some years. Marquis Lyon, he  
14 has been a childhood friend of Mr. Ortiz who traveled from New  
15 York to attend these proceedings. His grandmother Josephine  
16 in the back there, Your Honor, traveled from New York and his  
17 mother Myrna is here as well. She traveled from Florida, Your  
18 Honor.

19 He's got a lot more support than a lot of folks in this  
20 situation. I, for one, suggest the Court should take that as  
21 hope and optimism. We wish he had done more with that support  
22 before he arrived in this courtroom. Then at this point all  
23 we can do is hope that he will do that in the future. We  
24 can't change what happened and he knows he has to pay a price  
25 for it, but what I suggest is that you give him a reason for



1       hope. Thank you.

2               THE COURT: Thank you. Mr. Ortiz, as the defendant  
3 before the Court for determination and imposition of sentence,  
4 you have a constitutional right to address the Court at this  
5 time. Do you have anything you wish to say to me, sir? Stay  
6 right there. Stay right there.

7               THE DEFENDANT: I just want to say I'm sorry for the  
8 losses that was taken and it was never meant to be that way  
9 and I didn't think that was going to happen and that if I  
10 could do it all over again, I wouldn't do it the same way.  
11 I've got plans when I do get out and I'm trying to change my  
12 life around.

13              THE COURT: What are your plans?

14              THE DEFENDANT: I want to start a business.

15              THE COURT: What business?

16              THE DEFENDANT: I'm thinking about starting a  
17 business with my grandmother, try to get a restaurant going or  
18 something, you know what I mean? I mean I've been thinking  
19 about it for three years now and I think that's the right -- I  
20 got -- I know -- I've been around it so long that I know -- I  
21 got experience with it so that's what -- where I plan to go.

22              THE COURT: All right. Anything further, Mr. Rioux?

23              MR. RIOUX: Your Honor, I would note that because of  
24 the strange history of this case, he has been in custody for  
25 some time. Much of that time does not apply to this case. He

1       came into federal custody approximately a year and some  
2       months -- June?

3               MS. MCELWEE: 14 months ago.

4               MR. RIOUX: 14 months ago and so some of that  
5       pre-detention time is not applied to this case.

6               THE COURT: Right. Anything further?

7               MS. MCELWEE: Just on that point, Your Honor, all of  
8       the time, except for the 14 months, was credited to state  
9       issues and time he owed the state of Maine for the violations,  
10      but he will get credit for the 14 months in federal custody  
11      and with that in mind, even with the sentence the Government's  
12      proposing, Mr. Ortiz would be out at the age of 32.

13              May I have just a moment to check and see if anyone else  
14      has something to say?

15              THE COURT: Sure, yes.

16              MS. MCELWEE: Just one more thing, I didn't see this  
17      in my notes. Mr. Ortiz, after the incident in Biddeford, had,  
18      while incarcerated at two jails before coming into federal  
19      custody, an unusually large amounts of incidents, 35 incidents  
20      at the jail, which are described in the presentence report  
21      which I would suggest continue the same type of behavior that  
22      we see in his time leading up to that and I didn't mention  
23      that. Thank you, Judge.

24              THE COURT: All right. Thank you. The Court has  
25      carefully reviewed the contents of the written presentence

1 investigation report and takes those contents into account in  
2 determining sentence. The Court has considered what it has  
3 heard from counsel in the course of these proceedings, at the  
4 presentence report conference, the evidence at this hearing,  
5 including the allocution of this defendant.

6 The Court has already made its guideline calculations.  
7 I have taken into consideration each of the factors set forth  
8 in 18 USC section 3553(a), including the obligation to impose  
9 a sentence that is sufficient but no greater than necessary to  
10 achieve the purposes of the law.

11 Although I've considered each statutory factor, I  
12 focused on the history and characteristics of the defendant,  
13 the nature and circumstances of the offense and the need to  
14 protect the public from future crimes of the defendant.

15 I have started with a guideline sentence range of 36 to  
16 47 months, which is advisory.

17 Turning to the history and characteristics of the  
18 defendant, the defendant is a 25-year old native of New York  
19 City. The defendant's father, José Cruz, and his mother,  
20 Myrna Ortiz, were not married at his birth and the defendant's  
21 father left when he was about nine years old.

22 The defendant's father now lives in Texas and is not  
23 involved in the defendant's life. The defendant says his  
24 father has had a drug problem. Defendant's mother, who is  
25 present in the courtroom today, now lives in Holiday, Florida

1 and she is the manager of a phone store there. The defendant  
2 has two younger maternal half-brothers. One serves in the  
3 United States Army and the other is in school. He has three  
4 paternal half siblings, two in Pennsylvania and one an infant  
5 in Texas.

6 The defendant was raised in the Bronx. He says that his  
7 mother took good care of him. His aunt, as I mentioned, Lisa  
8 Valasquez, helped out when his mother was working and his  
9 paternal grandparents, one who is here today, owned  
10 restaurants in the Bronx where the defendant himself worked.  
11 He continues to stay in touch with his paternal grandmother,  
12 Josephine DellaSantos, who is here today.

13 The defendant denies being subject to any physical abuse  
14 while growing up. He recalls his mother had a long-term  
15 boyfriend who was verbally abusive to him, but the boyfriend  
16 is no longer with his mother. The defendant says he was  
17 brought up in a difficult neighborhood with drugs, violence  
18 and crime. It says he was jumped numerous times in the street  
19 and at one point he was stabbed in the elbow and another time  
20 cut.

21 He says he witnessed stabbings, shootings and two of his  
22 friends being murdered, one stabbed in the heart and the other  
23 shot in the stomach. Except for six months in Pennsylvania  
24 with his father and six months in Florida with his mother,  
25 he's always lived in the Bronx.

1           The presentence report says he had been staying in Maine  
2           for about a month before the incident which brings him to  
3           court today. The defendant attended Theodore Roosevelt High  
4           School in the Bronx through the 10th grade. At one point he  
5           was transferred to a group home and attended Bronx Group  
6           Preparatory Academy in the Bronx. He does not have a GED, but  
7           he is interested in obtaining one.

8           He has no physical problems relevant to sentencing,  
9           except his vision issues. The presentence report says the  
10          defendant suffers from myopia, nearsightedness, and his vision  
11          uncorrected is 20/800. I understand that 20/20 vision means  
12          that the person sees at 20 feet what a person with normal  
13          vision sees at 20 feet, but if he's 20/800, he needs to be  
14          20 feet away from an object to see what a normal person sees  
15          at 800 feet.

16          In fact, under Maine law, a person is considered blind  
17          if he has 20/200 vision, if not corrected. That's found in 26  
18          MRS, section 1418(1).

19          I see the defendant in glasses in court today and  
20          hopefully his vision has been corrected, but at the time that  
21          he was involved in this tragedy, he had a very significant  
22          problem with myopia and nearsightedness and when you think of  
23          all the evidence that he was possessing and waving around  
24          guns, it gives you pause.

25          The defendant has a mental health history as young as

1 six years old when he was diagnosed with ADHD and he would  
2 throw tantrums at school. He received special education and  
3 medication to manage this issue. At one point he attended  
4 Four Winds Psychiatric Health Facility in New York State.

5 After his 2014 incarceration, the defendant was  
6 diagnosed with depression and prescribed mood stabilizers,  
7 Prozac and Remeron. There was also a suggestion of alcohol  
8 abuse disorder, adjustment disorder and disturbance conduct,  
9 antisocial personality disorder and substance abuse disorder.

10 He was prescribed some medicine at the Somerset County  
11 jail, but for reasons that were disputed, he was not taking  
12 them. He has a substance abuse history. He began smoking  
13 marijuana at age 14 and he used marijuana every day, multiple  
14 times per day, until his arrest.

15 At age 20, he began drinking alcohol and there were  
16 periods of heavy drinking. He used Ecstasy on an experimental  
17 basis, but there's no evidence that the defendant abused  
18 heroin or crack cocaine, two of the drugs that he was dealing  
19 in Maine. He has not undergone any drug treatment, but he is  
20 interested in doing so.

21 The defendant has been incarcerated for most of time  
22 since 2015. Before that, he worked at his grandparents' Bronx  
23 restaurants and in Job Corp. The defendant has never married,  
24 he has no children. He does have a long-term girlfriend who  
25 lives in the Bronx with her two children.

1           He has a criminal history and I'm going to take a moment  
2           to describe it. His first conviction took place in New  
3           Rochelle, New York, after he was arrested in December of 2013  
4           for possessing forged \$20 bills. He was arrested on  
5           December 10, 2013, and was released on bail, but he failed to  
6           appear for his hearing in April -- on April 24, 2014. He was  
7           then arrested on March 6, 2015, and was charged with bail  
8           jumping.

9           On March 30, 2015, he was sentenced both for the  
10          possession of a forged instrument and for the bail jumping  
11          charge. He was given a six-month sentence on March 30, 2015.  
12          These sentences to run concurrently.

13          Given the fact that he was sentenced to six months on  
14          March 30, 2015, it is surprising he was arrested in Maine on  
15          August 26, 2015, for new criminal conduct, since it would seem  
16          to fall within the period he should have been incarcerated,  
17          but these sentences are often less than meets the eye.

18          In any event, on August 26, 2015, local police were  
19          conducting surveillance at a local hotel where they suspected  
20          prostitution was taking place. The police observed two  
21          females with a person later identified as the defendant. The  
22          police carried out a sting operation and the female who was  
23          acting as a prostitute identified Tye as having forced her  
24          into prostitution in exchange for drugs. Tye turned out to be  
25          the defendant.

1           The female also said the defendant had been supplying  
2           her heroin for about a week to keep her addicted so that she  
3           would work as a prostitute. Finally, she said the defendant  
4           had threatened her with a dark colored Smith & Wesson  
5           revolver.

6           The defendant was arrested on August 26, 2015, and  
7           charged with aggravated sex trafficking and unlawful  
8           furnishing a scheduled drug. On February 5, 2016, the  
9           defendant was sentenced in state court to both crimes. A  
10          four-year period of incarceration was imposed, but all but one  
11          year was suspended and the defendant was sentenced to three  
12          years of probation to follow.

13          According to the presentence report, the defendant was  
14          released from custody in Maine on July 29, 2016. His  
15          probation was immediately transferred to Brooklyn, New York.  
16          The defendant initially reported to probation in New York and  
17          then failed to report on subsequent occasions. A warrant was  
18          issued again for being a probation absconder.

19          He was next arrested in Maine on September 26, 2016, and  
20          charged with murder. The presentence report says that while  
21          awaiting trial on a murder charge, the defendant was charged  
22          with a violation of probation and that on November 18, 2016,  
23          he was sentenced to nine months incarceration and his  
24          probation was continued for three years, but he was later  
25          sentenced to another nine months to run consecutive to the



1 November 18, 2016, sentence and he finished serving that  
2 sentence in March of 2018.

3 Meanwhile, on June 25, 2018, the defendant was found not  
4 guilty of murder and manslaughter by a Maine jury. On  
5 June 27, 2018, a federal criminal complaint was issued against  
6 the defendant for being a felon in possession and on the same  
7 day he went into federal custody.

8 The defendant, as has been noted, has a criminal history  
9 Category IV. The defendant's criminal history score was  
10 increased two levels because at the time of his federal  
11 sentence under the criminal justice sentence for the  
12 aggravated sex trafficking and unlawful furnishing  
13 convictions.

14 Turning to the nature and circumstances of the offense,  
15 I've already described in detail the circumstances provided by  
16 the Government to conclude that the defendant had possessed a  
17 Ruger New Model Black Hawk on September 25-26, 2016. As I  
18 mentioned earlier, the defendant had been convicted of two  
19 felonies, aggravated sex trafficking and unlawful furnishing  
20 scheduled drugs, on February 5, 2016, and he was sentenced to  
21 four years in prison with all but one year suspended to be  
22 served concurrently.

23 On February 5, 2016, onward, there was a violation of  
24 federal criminal law for the defendant to possess a firearm.  
25 The defendant was released from incarceration on these

1 sentences on July 29, 2016. He was immediately transferred to  
2 Brooklyn and initially checked in with the probation officer  
3 in New York.

4 So we know that he was in New York City in late July to  
5 early August 2016, but that he absconded. We also know from  
6 Kristalyn Talmer's testimony that after she moved out of West  
7 Cutts Street, she went there to buy drugs from the defendant  
8 and she said that one week before the shooting, the defendant  
9 had the gun out and was waving it around West Cutts Street.

10 We also know the defendant showed Brittany Cox a  
11 revolver when they were at the Westbrook apartment before they  
12 went to West Cutts Street and in the prosecution version that  
13 the defendant admitted today in terms of he drew a Ruger 357  
14 revolver and brandished the revolver and ended up shooting  
15 Jonathan Methot on September 26, 2017.

16 The presentence report mentions another firearm, which  
17 is an AR 15 rifle, which the police found at the Westbrook  
18 apartment. The renter of the apartment denied knowledge of  
19 this firearm and it was a Ruger, and it turned out the AR 15  
20 had been stolen by the owner's brother to pay for drugs. It  
21 had distinctive markings and a witness confirmed defendant  
22 possessed that AR 15 at West Cutts Street.

23 The need to protect the public is obvious. That if the  
24 defendant continues his criminal lifestyle, he's bound to  
25 commit further crimes that harm the public.

1 I have taken into consideration a number of factors in  
2 this case. Specifically, I've taken into account the nature  
3 of the firearms. Here, we have a Ruger 357 Black Hawk, which  
4 is a common highly lethal pistol, and the other firearm is an  
5 AR 15. That's a semi-automatic lightweight rifle. A very  
6 lethal weapon.

7 I've considered the fact that one of the firearms,  
8 namely the AR 15, had been stolen and been traded for drugs  
9 and ended up in the defendant's possession.

10 I've considered the defendant's criminology. He spent  
11 most of his life in New York. I spent a while describing his  
12 criminology because I find it disturbing. On March 6, 2015,  
13 he was arrested for bail jumping and brought to court in New  
14 Rochelle, New York, and on March 30, 2015, he was sentenced to  
15 six months incarceration in New York for the bail jumping and  
16 forged instrument charges.

17 As I mentioned, if he had spent the full six months in  
18 jail, he would not have been in Maine on August 26, 2015, when  
19 he was arrested for aggravated sex trafficking and unlawful  
20 furnishing.

21 Then he's sentenced to one year incarceration and on  
22 those two charges he's released on July 29, 2016, and traveled  
23 directly to New York City. By September 25-26, the defendant  
24 however was back in Maine and the evidence is he's been in  
25 Maine for a while dealing drugs and probably involved again in

1 sex trafficking.

2 I mentioned all this because the defendant came to the  
3 attention of law enforcement in Maine as a result of their  
4 investigation of a gang in the Bronx called the Mack Baller  
5 Bloods. This gang had been trafficking heroin, crack and  
6 women in Maine.

7 I would point out there's no direct evidence that the  
8 defendant is involved with the Mack Dollar Bloods, but it  
9 seems unrefutable that the defendant walked into an existing  
10 drug distribution and sex trafficking network when he came to  
11 Maine. And the timing, his lack of steady employment, his  
12 trafficking in heroin and crack, his trafficking in women and  
13 his general MO is consistent with that kind of membership, but  
14 I find it too speculative to come to conclusions about gang  
15 membership and I haven't held that against the defendant and I  
16 haven't used it to enhance his sentence because I find it too  
17 speculative.

18 I have considered his possession of a firearm that led  
19 to the death of Jonathan Methot over an argument involving \$40  
20 in drugs, and I've also considered the defendant's willingness  
21 to plead guilty and accept responsibility for the offense,  
22 thereby allowing the Government to avoid the expense and the  
23 time and difficulty with a trial. I've considered all these  
24 factors in attempting to arrive at a sentence, to impose a  
25 fine and payment of restitution.

1           Mr. Ortiz, I'm going to speak to you for a brief moment  
2           and as I do, I'm going to tell you what sentence I'm going to  
3           impose and then I will ask you to stand for the imposition of  
4           sentence.

5           Mr. Ortiz, you're a young man, but your life is not  
6           going in the right direction. Over the past four years,  
7           you've spent a lot of time in jail, but in the time you  
8           haven't been in jail, you've been convicted of sex  
9           trafficking, drug furnishing, and now a weapons violation.

10          You received, in my view, an extraordinarily lenient  
11          sentence of one year incarceration for sex trafficking and  
12          drug furnishing, and it was apparent that the lenient sentence  
13          that was imposed by the state judge did not deter your  
14          continued conduct. As soon as you could, you returned to  
15          Maine and started sex trafficking and drug trafficking  
16          immediately.

17          This has to stop, Mr. Ortiz. Just reflect on the fact  
18          that you were charged with and acquitted of murder. Consider  
19          the fact that the gun that you possessed that day you  
20          shouldn't have possessed at all. Consider the fact that if  
21          you had obeyed the law, Jonathan Methot would not be dead and  
22          his family would not be here watching your sentencing.

23          You say, and I take you at your word, that you're sorry  
24          that you shot and killed Jonathan Methot. It would take a  
25          cold-hearted person not to say that, but I take you at your

1 word, but the fact of the matter was you were hanging around a  
2 trap house. You were carrying a firearm into a trap house.  
3 The firearm was loaded. You didn't have to load that gun.  
4 You don't bring a loaded firearm to a trap house unless you  
5 intend to use it, and you knew that you were going to be  
6 dealing with people who were addicted to drugs and you knew  
7 all that that entails.

8 You also knew, because I've read your Facebook page,  
9 that you have a hair trigger temper. You've had a temper ever  
10 since you were a little boy, and you find it hard to control  
11 yourself and you get into a tantrum and it's pretty obvious  
12 why you had the gun. You had the gun because drug dealing,  
13 sex trafficking and doing that kind of criminal behavior is  
14 inherently dangerous.

15 Someone comes in and tries to take the money or the  
16 drugs, they can't call the police so you've got to protect  
17 yourself and you've got to protect the money.

18 I read your Facebook posting and it's apparent that you  
19 were into the culture. You say on your Facebook page you were  
20 young, untouchable, money maker, yumm, Y-U-M-M.

21 Now, Mr. Ortiz, you're not quite as young as you used to  
22 be. You are certainly, as you found out, not untouchable and  
23 may I suggest that you need to find ways of making money that  
24 do not hurt other people.

25 I look at your family here today and I don't know how

1     you fell so far from the church. Look at your family. They  
2     came up all of the way from Florida and New York City.  
3     They're hardworking people. They're business people. They  
4     strike me, looking at them, as good people and I'm going to  
5     suggest to you that it's time that you began -- begin to grow  
6     up and become the person, the son, the grandson you were  
7     raised to be.

8             I'm also going to suggest to you the following and, that  
9     is, when you get out of prison, you're going to be on  
10    supervised release and you can treat that in two ways. You  
11    can treat it the way you treated some of the corrections  
12    officers and you can wrangle against it and you can swear at  
13    them and you cannot attend meetings and you can do it your own  
14    way. And what you will do is you will provoke the law  
15    enforcement side of the probation officer and you'll end up  
16    back in jail. Or you can use them as a social worker and you  
17    can reorder your life and you can say, you know, I'm not going  
18    to hurt another woman. I'm not going to feed another  
19    addiction. I'm not going to kill another man.

20            But I will tell you this, Mr. Ortiz, if you go back and  
21    do what you did in the past in the future, you are going to  
22    find a judge saying that you are incorrigible and there's no  
23    hope. You've got one last chance.

24            I'm going to impose the \$100 special assessment. I'm  
25    going to impose three years of supervised release. I'm going

1 to impose conditions on that supervised release so you'll stop  
2 violating the law and you'll go back to work.

3 I'm not going to fine you because it seems to me that if  
4 you are working, you ought to gain the benefit of your labor.  
5 In terms of the sentence, I'm going to impose -- you face a  
6 guideline sentence range of 37 to 46 months. The Government  
7 has urged me to impose a sentence of 115 months. Under the  
8 plea agreement, your lawyer has urged me to impose a sentence  
9 of 92 months. I am accepting your lawyer's earlier  
10 recommendation and imposing a sentence of 92 months. You'll  
11 stand for the imposition of sentence.

12 The defendant is hereby committed to the custody of the  
13 United States Bureau of Prisons to be imprisoned for a total  
14 term of 92 months. The Court recommends the defendant for  
15 enrollment in the 500-hour comprehensive drug treatment  
16 program.

17 The defendant is remanded to the custody of the United  
18 States Marshal. Upon release from imprisonment, the defendant  
19 shall be on supervised release for a term of three years. The  
20 Court imposes the following mandatory conditions: You must  
21 not commit another federal, state or local crime. You must  
22 not unlawfully possess a controlled substance. You must  
23 refrain from the unlawful use of a controlled substance. You  
24 must submit to one drug test within 15 days of release from  
25 imprisonment and at least two additional drug tests during the



1 term of supervision, but not more than 120 drug tests per year  
2 thereafter as directed by the probation officer.

3 You must cooperate in the collection of DNA as directed  
4 by the probation officer. You must comply with the standard  
5 conditions that have been adopted by this Court, as well as  
6 any other conditions.

7 You shall comply with the following special conditions:  
8 The defendant shall participate in workforce development  
9 programs and services as directed by the supervising officer  
10 and, if not employed, shall perform up to 20 hours of  
11 community service per week.

12 Workforce development programming may include assessment  
13 and testing, educational instruction, training classes, career  
14 guidance and job search and retention services.

15 The defendant shall not use or possess any controlled  
16 substance, alcohol or other intoxicant and shall participate  
17 in a program of drug and alcohol abuse therapy to the  
18 supervising officer's satisfaction. The defendant shall pay  
19 or co-pay for services during such treatment to the  
20 supervising officer's satisfaction.

21 The defendant shall not obstruct or tamper or try to  
22 obstruct or tamper in any way with any tests.

23 3. The United States probation officer may conduct a  
24 search of the defendant and of anything the defendant owns,  
25 uses or possesses if the officer reasonably suspects that the

1 defendant has violated a condition of supervised release and  
2 reasonably suspects that evidence of the violation would be  
3 found in the areas to be searched. Searches must be conducted  
4 at a reasonable time and in a reasonable manner. Failure to  
5 submit to a search may be grounds for revocation of release.

6 4. The defendant shall not own or possess any firearm  
7 or other dangerous weapon or knowingly be at any time in the  
8 company of anyone known by him to possess a firearm or other  
9 dangerous weapon;

10 And 5. The defendant shall participate in mental health  
11 treatment, to include anger management, as directed by the  
12 supervising officer until released from the program by the  
13 supervising officer. The defendant shall pay or co-pay for  
14 services during such treatment to the supervising officer's  
15 satisfaction.

16 The Court imposes a criminal monetary penalty in the  
17 amount of \$100 on Count 1. The Court finds the defendant does  
18 not have the ability to pay a fine. The Court will waive the  
19 fine in this case. Payment of the criminal monetary penalty  
20 shall be due in full immediately. Any amount the defendant is  
21 unable to pay now is due and payable during the term of  
22 incarceration. Upon release from incarceration, any remaining  
23 balance shall be paid in monthly installments to be initially  
24 determined in an amount of the supervising officer. Said  
25 payments are to be made during the period of supervised

1 release, subject always to review by the sentencing judge on  
2 the request by either the defendant or the Government.

3 Is there any objection to the terms of supervised  
4 release on the part of the defendant?

5 MR. RIOUX: No, Your Honor.

6 THE COURT: On the part of the Government?

7 MS. MCELWEE: No, Your Honor.

8 THE COURT: Mr. Ortiz, I must advise you of your  
9 right to appeal. You've entered into a plea agreement as you  
10 know. The plea agreement provides that you have waived the  
11 right to appeal your guilty plea and any other aspect of your  
12 conviction and the sentence of imprisonment that does not  
13 exceed 115 months.

14 The sentence I imposed is below 115 months and therefore  
15 you waived your right to appeal your guilty plea, your  
16 conviction and the sentence I just imposed; do you understand?

17 THE DEFENDANT: Yes.

18 THE COURT: These agreements are usually upheld as a  
19 matter of law. If for any reason you believe that your  
20 agreement is unenforceable and you wish to present that  
21 argument to the Court of Appeals by way of appeal, you must  
22 cause to be filed with the clerk of this court, within 14 days  
23 of today, a written notice of appeal; do you understand?

24 THE DEFENDANT: Yes.

25 THE COURT: I advise you if you fail to timely file

1 the written notice of appeal, you've given up your right to  
2 appeal the sentence or the right to challenge the  
3 effectiveness of the waiver of your right to appeal the  
4 sentence and conviction; do you understand?

5 THE DEFENDANT: Yes.

6 THE COURT: If you cannot afford to file the appeal,  
7 you can appeal without cost to you and on your request, the  
8 clerk will immediately prepare and file a notice of appeal on  
9 your behalf; do you understand?

10 THE DEFENDANT: Yes.

11 THE COURT: You may be seated. Does the Government  
12 have a motion on the indictment?

13 MS. MCELWEE: Yes, Your Honor. At this time the  
14 Government orally moves to dismiss the indictment in this  
15 case.

16 THE COURT: Is there any objection?

17 MR. RIOUX: No, Your Honor.

18 THE COURT: On motion by the Government and without  
19 objection on the part of the defendant, the Court hereby  
20 dismisses the indictment in this matter.

21 Is there anything further from the Government?

22 MS. MCELWEE: No. Thank you, Your Honor.

23 THE COURT: Anything further from the defendant?

24 MR. RIOUX: Your Honor, we would ask that the Court  
25 make a recommendation for placement to be as close as possible

1 to his family in the New York City area or to a facility  
2 reasonably close if that may be possible.

3 THE COURT: Sure. Court recommends to the Bureau of  
4 Prisons, if possible, the defendant be allowed to serve his  
5 sentence at a place as close to New York City as possible,  
6 specifically including Fort Dix.

7 Is there anything further from the defendant?

8 MR. RIOUX: Nothing from us.

9 THE COURT: I have just a couple of final  
10 statements. First, I want to speak to Mr. Ortiz's family. I  
11 want you to know I find it hard to sentence a young man like  
12 Mr. Ortiz to such a long period of incarceration. It's not  
13 easy and I didn't do it because I felt any sense of revenge or  
14 anything. I did it because I felt I had to.

15 I'm very impressed with the fact you're here because it  
16 signals to me that he will have your support and will have the  
17 support not only while he's in prison, but also when he gets  
18 out. You've sent a wonderful signal to him by being here  
19 today and I appreciate that.

20 I want to talk to the family, if they're still here, of  
21 Mr. Methot. It's a terrible tragedy. I'm so sorry that you  
22 lost Jonathan. What struck me is that I know he had troubles,  
23 but two of the women who were presented in this hearing had  
24 troubles too and they both said they recovered and they have a  
25 good life and because of what happened, Jonathan was robbed of

1 the ability to change.

2 So I'm terribly sorry and I hope that this process  
3 ultimately will give you a sense that justice was done.

4 Anything further from the Government?

5 MS. MCELWEE: Thank you. No, Your Honor.

6 THE COURT: Anything further from the defendant?

7 MR. RIOUX: No. Thank you.

8 THE COURT: The defendant is hereby remanded to the  
9 custody of the United States Marshal for the District of Maine  
10 in execution of the sentence imposed. Good luck, Mr. Ortiz.  
11 Court will stand in recess.

12 (End of proceeding)

13 **C E R T I F I C A T I O N**

14 I, Dennis Ford, Official Court Reporter for the United States  
15 District Court, District of Maine, certify that the foregoing  
16 is a correct transcript from the record of proceedings in the  
17 above-entitled matter.

18 Dated: September 7, 2020

19 /s/ Dennis Ford

20 Official Court Reporter

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